

ENROLLED ORDINANCE 169-68

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING CODE TO CREATE
SUBSECTION 82-21(d)(35) TO CREATE A CONDITIONAL USE OPTION FOR
FIREARMS SALES WHEN ACCESSORY TO A RESIDENTIAL USE (ZT-1795)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Mukwonago Town Board on July 2, 2014, and

WHEREAS, the matter was referred to and considered by the Waukesha County Park and Planning Commission, which recommended approval and reported that recommendation to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, as required by Section 60.61, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the text of the Town of Mukwonago Zoning Code, adopted by the Town of Mukwonago on February 27, 2007, is hereby amended to create Subsection 82-21(d)(35) to create a Conditional Use option for firearms sales when accessory to a residential use, more specifically described in the "Staff Report and Recommendation" on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference ZT-1795, is hereby approved.

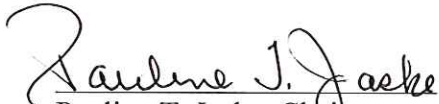
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Mukwonago.

BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

BE IT FURTHER ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.


AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING CODE TO CREATE
SUBSECTION 82-21(d)(35) TO CREATE A CONDITIONAL USE OPTION FOR
FIREARMS SALES WHEN ACCESSORY TO A RESIDENTIAL USE (ZT-1795)


Presented by:
Land Use, Parks, and Environment Committee


Pauline T. Jaske, Chair


Jim Batzko


Jennifer Grant



Keith Hammitt


Eric Highum



William Mitchell


Thomas J. Scheninger

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 11/25/2014, 
Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

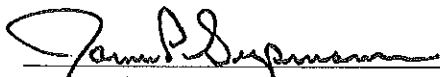
Approved: X
Vetoed: _____
Date: 12-2-14, 
Daniel P. Vrakas, County Executive


COMMISSION ACTION

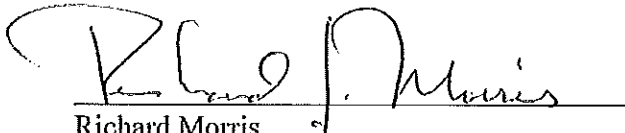
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Mukwonago Zoning Ordinance hereby recommends approval of ZT-1795 (Text Amendment) in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION

October 16, 2014

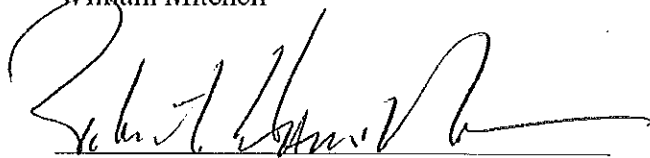

James Siepmann, Chairperson


Robert Peregrine


Richard Morris


Gary Goodchild

Absent
William Mitchell


Robert Hamilton

WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE
STAFF REPORT AND RECOMMENDATION
TEXT AMENDMENT

FILE NO.: ZT-1795

DATE: September 18, 2014

PETITIONER: Town of Mukwonago Board
Town of Mukwonago Hall
W320 S8315 Beulah Road
Mukwonago, WI 53149

NATURE OF REQUEST:

Create Subsection 82-21(d)(35) of the Town of Mukwonago Zoning Code (Town Ordinance 2014-O-18) to create a Conditional Use option for firearms sales when accessory to a residential use.

PUBLIC HEARING DATE:

July 2, 2014.

PUBLIC REACTION:

None.

TOWN PLAN COMMISSION:

On July 2, 2014, the Town of Mukwonago Plan Commission unanimously recommended in favor of the proposed amendments. One Commissioner that could not be present at the meeting expressed written comments regarding traffic and safety, and noted concern about retail businesses in residential settings. She suggested that such a business might be more appropriate in a designated commercial area.

TOWN BOARD ACTION:

On July 2, 2014, the Town of Mukwonago Town Board approved the Zoning Ordinance Amendments as recommended by the Town Plan Commission on a four to one vote.

OTHER CONSIDERATIONS:

The Town of Mukwonago is proposing amendments to the Town Zoning Code to create a conditional use (CU) option that would be available for individuals seeking Federal Firearms Licenses within residential zoning districts. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) requests zoning approval from local units of government prior to issuing federal firearms licenses to individuals or entities. This new CU option would allow for a process whereby individuals could seek zoning authorization for limited firearm sales from residential properties, whereas, the Town code does not currently provide for such a specified option within residential zoning districts.

The County has had several requests for gunsmithing or for sales or transfers of firearms at residential properties over the years. Similar to other limited retail operations, the County codes do not, by right, allow for retail sales of products from residential properties except for certain limited exceptions. Accordingly, because of the lack of specific zoning code parameters to address such uses, the County has regulated said activities under the "unspecified" Conditional Use provisions of the code. As part of the Conditional Use process, the Waukesha County Park and Planning Commission, upon recommendation of the respective town, has considered and conditioned approval of such limited operations based upon a fairly standard set of approval

guidelines. Such conditions typically include limits on hours of operation, signage, and a requirement that a federal license be maintained, etc. Tim Schwecke, the Town of Mukwonago Planner, asked our office for copies of some recent example Conditional Use Permits for such operations so that he had a sort of template to work from in drafting the proposed amendments.

The proposed Conditional Use requirements are detailed in the attached ordinance. Specifically, the Town's proposed criteria require that an ATF firearms license be obtained with a copy filed with the Town Clerk, that there be no non-household employees on the site, that hours of operation be by appointment only, that no test firing be done on-site, etc. As with any type of Conditional Use, the Town is charged with analyzing specific CU requests to ensure that the granting of a Conditional Use will not violate the intent of the Town Plan and Zoning Ordinance, that proposals won't be contrary to public health, safety or general welfare or be hazardous, offensive or a nuisance.

STAFF RECOMMENDATION:

It is the opinion of the Planning and Zoning Division Staff that the proposed text amendments be **approved**. Gunsmithing is a trade that has long been conducted from residential properties and this new zoning option will allow for similar type uses to be considered in such settings. The Conditional Use process will ensure that appropriate limits on the amount of customer traffic and other similar factors be considered so as to allow for compatibility of uses within neighborhoods. It is the opinion of Staff, that providing a clear set of expectations for such uses will minimize the potential for negative neighborhood impacts such as too much traffic or unlicensed operators.

Respectfully submitted,

Jason Fruth

Jason Fruth
Planning and Zoning Manager

Attachment: Town Ordinance 2014-O-18

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ORDINANCE 2014-O-18

AN ORDINANCE TO CREATE SUBSECTION 82-21(d)(35) OF THE TOWN OF MUKWONAGO MUNICIPAL CODE RELATED TO ALLOWING FEDERAL FIREARM LICENSES AS CONDITIONAL USES WHEN ACCESSORY TO A RESIDENTIAL USE

WHEREAS, the Town Board for the Town of Mukwonago adopted a zoning code for the Town of Mukwonago in 1953 and has amended it from time to time since then; and

WHEREAS, that zoning code is codified as Chapter 82 of the Town of Mukwonago Municipal Code, titled "Zoning;" and

WHEREAS, the Town Board for the Town of Mukwonago prepared a recommended ordinance to update the Town zoning code with regard to allowing federal firearm licenses (FFLs) as conditional uses when accessory to a residential use in a residential or agricultural zoning district; and

WHEREAS, the Town Clerk for the Town of Mukwonago has properly referred the matter to the Plan Commission and to the Waukesha County Park and Planning Commission, pursuant to Section 82-265(c) of the Town of Mukwonago Zoning Code; and

WHEREAS, the Town Board has conducted the necessary investigation, and scheduled a public hearing for the Plan Commission and the Town Board, pursuant to Section 82-265(c)(2) of the Town of Mukwonago Zoning Code; and

WHEREAS, upon due notice as required by Section 82-267(a), the Town Board held a public hearing on July 2 , 2014 pursuant to Section 82-265(d) of the Town of Mukwonago Zoning Code along with the Plan Commission; and

WHEREAS, within a reasonable time after the hearing, the Plan Commission has reported its recommendation to the Town Board; and

WHEREAS, the Town Board for the Town of Mukwonago, after carefully reviewing the recommendation of the Plan Commission for the Town of Mukwonago and having given the matter due consideration having determined that all procedural requirements and notice requirements have been satisfied, and having based its determination on the effect of the adoption of the ordinance on the health, safety and welfare of the community and the preservation and enhancement of property values in the community, and having given due consideration to the municipal problems involved hereby determine that the ordinance amendment will serve the public health, safety and general welfare of the Town of Mukwonago, will enhance property values in the Town and will not be hazardous, harmful, noxious, offensive or a nuisance, and will not unduly limit or restrict the use of property in the Town or for any other reason cause a substantial adverse effect on the property values and general desirability of the Town.

NOW, THEREFORE, the Town Board for the Town of Mukwonago, Waukesha County, does hereby ordain as follows:

RECEIVED

AUG 06 2014

DEPT OF PARKS & LAND USE

SECTION 1. Subsection 82-21(d)(35) of Chapter 82 of the Town of Mukwonago municipal code entitled "Zoning," is hereby created to read as follows:

- (35) *Federal Firearms Licenses.* Activities regulated under a Type 01 federal firearms license when accessory to a single-family residential use in any zoning district, subject to all of the following:
- a. The operator shall obtain a Type 01 federal firearms license from the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, and maintain such license for the duration of the use. Upon issuance, the operator shall provide a copy of the approved permit to the Town of Mukwonago Town Clerk.
 - b. The operator shall comply with all requirements related to the aforementioned federal firearms license. Any violation of such license constitutes a violation of this zoning code.
 - c. Employees working under the federal firearms license on the premises shall be limited to only those persons living on the premises.
 - d. The hours of operation shall be by appointment only. There shall be no appointments before 8:00 am or after 8:00 pm.
 - e. Test firing of any gun on the premises is strictly prohibited.
 - f. Signage related to the business is strictly prohibited.
 - g. An approved conditional use is personal to the person or the business listed on the federal firearms license and is therefore not transferrable to a subsequent property owner.
 - h. The Plan Commission may recommend and the Town Board may establish a limit on the number of number of transactions occurring on the premises (i.e., to address customer traffic) to ensure the use is in keeping with the character of the surrounding area. If the Town Board does not establish such a limit at the time of approval, the Town Board reserves the right to establish a limit at any time with written notice to the operator. Additionally, the Town Board reserves the right to change any such limitation with written notice to the operator if it determines that the amount of customer traffic is having a detrimental effect on the surrounding area.
 - i. The conditional use permit shall be reviewed every two (2) years by the plan commission in order to determine conformance with the terms of the permit and its compatibility with the adjacent land uses. Failure to conduct such review shall not invalidate any subsequent review or any enforcement proceeding. If it is determined that the conditional use permit is no longer compatible, or that the provisions of the permit have not been

complied with, the conditional use permit may be revoked or amended in accordance with the procedures set forth in this chapter.

Although the Type 01 federal firearms license obtained by the operator from the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives allows for certain activities to occur under said license, as part of the conditional use process the Town Board may by conditions imposed as part of the conditional use approval restrict or place conditions on the activities allowed under the license.

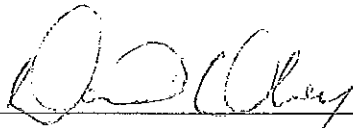
SECTION 2. SUBMITTAL TO WAUKESHA COUNTY. The Town of Mukwonago Town Clerk is directed to send three signed copies of this ordinance to the Waukesha County Clerk for approval of the Waukesha County Board of Supervisors.

SECTION 3. SEVERABILITY. Several sections of this ordinance are declared to be severable and if any section or portion thereof shall be declared by a decision of the court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance which shall remain. The remainder of the ordinance shall remain in full force and effect and any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect immediately upon passage and posting or publication as provided by law following approval by the Waukesha County Board of Supervisors.

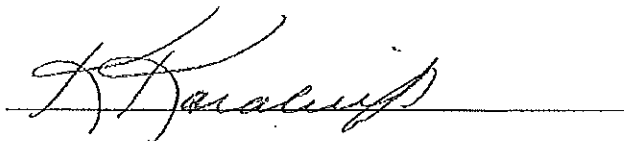
Adopted this 2nd day of July 2014

TOWN OF MUKWONAGO



David Dubey, Town Chairman

ATTEST:



Kathy Karalewitz, Town Administrator/Clerk

Published and posted this 16 day of July 2014

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-11/25/14

NUMBER-1690071

- 1 R. KOLB.....AYE
- 3 R. MORRIS.....AYE
- 5 J. BRANDTJEN.....AYE
- 7 J. GRANT.....AYE
- 9 J. HEINRICH.....AYE
- 11 C. HOWARD.....AYE
- 13 P. DECKER.....AYE
- 15 B. MITCHELL.....AYE
- 17 D. PAULSON.....AYE
- 19 K. CUMMINGS.....AYE
- 21 W. ZABOROWSKI.....AYE
- 23 K. HAMMITT.....
- 25 G. YERKE.....AYE

- 2 D. Zimmermann.....AYE
- 4 J. BATZKO.....AYE
- 6 J. WALZ.....AYE
- 8 E. HIGHUM.....AYE
- 10 D. SWAN.....AYE
- 12 P. WOLFF.....AYE
- 14 C. PETTIS.....AYE
- 16 M. CROWLEY.....AYE
- 18 L. NELSON.....AYE
- 20 T. SCHELLINGER...AYE
- 22 P. JASKE.....AYE
- 24 S. WHITTOW.....AYE

TOTAL AYES-24

TOTAL NAYS-00

CARRIED_____

DEFEATED_____

UNANIMOUS

X

TOTAL VOTES-24