

CHAPTER 2

THE GOVERNING BODY

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2.01 THE VILLAGE BOARD.

See §1.10 of this Municipal Code.

2.02 MEETINGS, REGULAR AND SPECIAL.

The first regular meeting of the Village Board shall be held on the 3rd Tuesday of April of each year and thereafter regular meetings of the Board shall be held on the 1st and 3rd Tuesdays of each month. The meetings shall be at a time set by the Village Board. The Village Board shall meet at such other times as the Board may direct, but special meetings may be called by any 2 trustees in writing filed with the Clerk, who shall thereupon notify all trustees of the time and place thereof by giving to the trustees a notice in writing at least 24 hrs. previous to the time of the meeting. All meetings of the Village Board, its committees, boards and commissions shall be held in compliance with the Wisconsin Open Meeting Law.

2.03 PRESIDING OFFICER.

- (1) The President shall preside at all meetings when present, and shall at the hour of meeting call the Board to order. He shall preserve order and decorum and decide all questions of order, subject to an appeal to the Board.
- (2) The presiding officer shall not engage in debate nor shall he speak for or against any measure before the Board unless he shall have first relinquished his chair as presiding officer for the duration of such debate speech.

2.04 QUORUM.

Four trustees shall constitute a quorum, and a less number may adjourn from time to time.

2.05 PRESIDENT OF VILLAGE BOARD.

The President of the Village Board shall not appoint himself to any committee as a regular member thereof, provided, however, that he shall serve as a member ex-officio of each committee without the power of vote but with the right to debate.

2.06 ROLL CALL: PROCEDURE WHEN QUORUM NOT IN ATTENDANCE.

As soon as the Board shall be called to order, the Clerk shall proceed to call the names of the members in alphabetical order, noting who are present and who are absent, and record the same in the minute book adopted for that purpose. If it shall appear that there is not a quorum present, the facts shall be entered upon the record, and the President and

members of the Board may adjourn or the President, and in his absence the Clerk, may direct the Village Police Chief or other police officer to immediately summon the absentees.

2.07 ABSENCE OF THE PRESIDENT.

In the case of the absence of the President at the time of the meeting, the Clerk shall call the Village Board to order and the Board shall elect another trustee as President pro tem.

2.08 ACTION OF VILLAGE BOARD LEVYING TAXES, APPROPRIATING FUNDS OR CREATING VILLAGE LIABILITY.

Except upon the unanimous consent of all members present, no resolution or measure assessing or levying taxes, appropriating or disbursing money or creating any liability or charge against the Village or any funds thereof shall be adopted without first having been referred to a committee and the report thereon of such committee having been made to the Village Board, unless the resolution is one that carries into effect the action of the Village Board upon a committee report. All other resolutions may be adopted at the same meeting at which they are introduced, provided, however, that action upon any resolution shall be deferred until the next meeting of the Village Board upon request of one of the trustees present.

2.09 ORDER OF BUSINESS.

At each regular meeting of the Village Board the order of business shall be as follows:

- (1) Reading and correcting the minutes of the preceding meeting.
- (2) Presentation of petitions, memorials, remonstrances, resignations and other communications.
- (3) Reports of committees may be made and considered, first from standing committees and next from select committees.
- (4) Resolutions may be introduced and acted upon.
- (5) Ordinances may be introduced, and ordinances introduced at a previous meeting may be put on their passage.
- (6) Accounts may be introduced and acted upon.
- (7) Unfinished business may be taken up.

(8) Miscellaneous business.

2.10 ORDINANCES, RESOLUTIONS AND COMMUNICATIONS TO BE IN WRITING. [Am. #093-23]

All ordinances, resolutions, memorials or other communications shall be in writing with a brief statement of their contents endorsed thereon, together with the name of the member presenting the same, and shall be delivered to and shall be read by the Clerk. Each committee to which any matter shall be referred shall report thereon in writing.

2.11 STANDING COMMITTEES

The standing committees of the Village Board shall be appointed by the Village President at the President's discretion notwithstanding any other provision of this code. Such appointment shall be for one year. Each trustee shall be chairman of at least one committee and serve on two others. The standing committees shall be as follows:

- (1) FINANCE AND BUDGETARY
- (2) PUBLIC SAFETY AND HEALTH
- (3) STORM AND WASTEWATER (also referred to as the Sewer Utility Committee in Chapter 13 and as the Stormwater Committee in Chapter 21)
- (4) PUBLIC WORKS AND CAPITAL IMPROVEMENTS
- (5) ADMINISTRATION, PERSONNEL, POLICY AND LEGAL
- (6) ECONOMIC DEVELOPMENT AND REDEVELOPMENT
- (7) PARKS, RECREATION, AND EVENTS

2.12 REFERENCE TO COMMITTEES.

All matters presented to the Board which require reference shall be referred by the President to the proper committee with the motion, unless objection is made.

2.13 READING OF ORDINANCES AND RESOLUTIONS. (Am. #093-23)

- (1) Every proposed ordinance shall have its first reading at the time of its introduction and shall be referred to the appropriate committee. The first reading shall be by title. Prior to adoption at a subsequent meeting, an ordinance shall have a second reading, which shall be by title only, unless a full reading is requested by a

majority of the members present. First and second reading of an ordinance may be given at the same meeting upon a vote of 2/3 of the members present.

- (2) Every proposed resolution shall have its reading at the time of its introduction. The reading shall be by title only, unless a full reading is requested by a majority of the members present. The resolution may be adopted at the same meeting it is introduced.

2.14 ACCOUNTS CONTRACTED AGAINST THE VILLAGE.

Every committee or officer who shall have contracted an account against the Village by authority of the Village Board shall cause such account to be presented to the Board within one month thereafter.

2.15 EXAMINATION AND APPROVAL OF ACCOUNTS.

All accounts against the Village shall be first examined and approved by the Village Board before being paid.

2.16 MOTIONS.

When a motion is made and seconded, it shall be stated by the presiding officer or read by the Clerk previous to debate.

2.17 VOTES; HOW TAKEN.

All questions shall be put in this form: "Those who are in favor of the motion, (state the question) say aye; those opposed say no"; and in doubtful cases, or before the question is decided, any member may call for a division of the ayes and noes; and when the ayes and noes are called for and ordered, the vote shall be entered on the minutes. The ayes and noes shall in all cases be ordered when called for by one trustee.

2.18 MOTIONS WHICH TAKE PRECEDENCE WHEN A QUESTION IS UNDER DEBATE.

No motion shall be received unless to adjourn, to lay on the table, or for the previous question, to commit, to amend, to postpone, and these several motions shall have precedence in the order in which listed.

2.19 DIVISION OF QUESTION.

Any member may call for a division of the question when the same may admit thereof.

2.20 RESOLUTIONS AND MOTIONS ENTERED IN MINUTES.

In all cases where a resolution or motion shall be entered on the minutes, the name of the member moving the same shall be entered on the minutes.

2.21 RECONSIDERATION.

When a question has once been decided, it shall be in order for any member voting in the affirmative to move for a reconsideration thereof at the same or the next regular meeting.

2.22 MEMBERS MUST ADDRESS PRESIDING OFFICER.

When any member is about to speak or deliver any matter to the Village Board, he shall rise from his seat and respectfully address himself to the President, but shall not proceed with his remarks until recognized by the Chair.

2.23 LIMITATION ON DEBATE.

When a member is called to order, he shall take his seat, and shall not be allowed to proceed until the question of order is decided, and no member shall speak more than twice at the same meeting on any question except by leave of the Village Board.

2.24 CALL OF THE VILLAGE BOARD.

A call of the members of the Board shall be ordered at any time by request of one or more members, and absent members shall be sent for, but a call cannot be made after voting has commenced; and a call of the Board being requested and ordered and the absentees noted, the doors shall be closed until the report of the police officer has been received and acted upon, or further proceedings under call be dispensed with by a majority of the Board. Any member of the Board absent at a call of the members of the Board shall, without a valid excuse for his absence, be required to pay the expense of the police officer in procuring his attendance.

2.25 DISTURBANCE OR DISORDERLY CONDUCT AT VILLAGE BOARD MEETING.

When any disturbance or disorderly conduct shall occur at any of the meetings of the Board, the presiding officer shall have power to cause the room to be cleared of all persons guilty of such disorderly conduct, except members of the Board. In case a member of the Board shall be guilty of disorderly conduct, the presiding officer shall have power to order the police officer to take him into custody for the time being, or until the Board shall adjourn. Such member shall have the right to appeal from such order to the Board as in other cases, but shall not be permitted to debate the appeal.

2.26 INTERRUPTION OF SPEAKER.

When any member is speaking, no member shall entertain any private discourse or in any way interrupt the speaker, except as to a question of order.

2.27 APPROPRIATIONS AND ACCOUNTS.

No ordinance shall be passed, accounts allowed or appropriation of money voted unless a majority of the whole Board shall vote in favor thereof. The vote shall be by ayes and noes and shall be recorded in the journal. No ordinance shall be passed, accounts allowed or appropriation of money voted at any special meeting.

2.28 AMENDMENT OF RULES.

These rules may be rescinded, amended or altered, or new rules adopted by a 2/3 vote of all the members of the Board on the report of a committee to which the subject has been referred at a previous meeting.

2.29 SUSPENSION OF RULES.

It shall require a vote of 2/3 of the members present to suspend any rule of the Village Board. The vote shall be by ayes and noes and shall be recorded in the journal.

2.30 REMARKS BY NONBOARD MEMBERS.

- (1) Persons who are not members of the Village Board shall be allowed to speak at any Village Board meeting upon suspension of the rules and upon the request of a trustee for unanimous consent that such person be heard.
- (2) Members of the public permitted to be heard as provided above shall come forward and give their name and address to the Clerk. Upon being heard such persons shall answer questions directed to them by Village Board members. Upon completion of being heard such member of the public shall return to his seat in the audience. Members of the Board or other members of the public shall not be permitted to enter into debate at any time.

2.31 ORDINANCES AND RESOLUTIONS ENGROSSED AND ENROLLED BY CLERK.

The Village Clerk shall see that all ordinances and resolutions are correctly engrossed and enrolled before the same are published or signed by the President.

2.32 DUTIES OF CLERK.

In addition to his other duties, the Clerk shall:

- (1) Be present at all meetings of the Board and keep a correct journal of the proceedings of each meeting, and make a correct record of the same.
- (2) Engross all ordinances and bylaws and record the same in a book of ordinances.
- (3) Furnish the committees with copies of resolutions and other matters that may be referred to them (unless the original papers are furnished).
- (4) Keep a true account of the expenditures of money by order of the President and Board.
- (5) Do such other clerical duties as may be prescribed by the Board.

2.33 COMMITTEE QUORUMS.

A majority of the members of any committee shall constitute a quorum.

2.34 DEFERRING ACTION.

Action upon any report of a committee to the Board shall be deferred to the next regular meeting of the same by request of one of the trustees present.

2.35 SEAL.

- (1) The Village Board is empowered and instructed to adopt and procure for the Village an official seal. Such seal shall be of the usual form and size.
- (2) The Village Clerk shall have the custody of the seal with power to affix the same to all documents requiring the corporate seal, the same to be attested by his signature.

2.36 ROBERT'S RULES OF ORDER.

The rules of parliamentary practice comprised in "Robert's Rules of Order," latest edition, shall govern the Village Board in all cases in which they are applicable and in which they are not inconsistent with these rules.

2.37 APPEAL FROM DECISION OF PRESIDENT OR PRESIDING OFFICER.

No appeal from the decision of the President or presiding officer shall be sustained, except by a 2/3 vote of all members of the Board present at the meeting.

2.38 NEW ORDINANCES TO BE NUMBERED.

All ordinances, the substance of which would have the effect of amending, altering or adding to the provisions of this Municipal Code, shall be drawn as amendments, alterations or additions to such Code, and every section shall be given a number which shall locate such section in the proper sequence in the Code. The Village Attorney shall assign proper section numbers for all ordinances introduced into the Village Board creating new sections to this Code. No such ordinance shall be introduced into the Village Board unless so numbered.

2.39 PUBLICATION OF ORDINANCES.

The ordinances and bylaws of the Village shall be published by posting the same in at least 3 public places in the Village, and proof thereof filed and recorded by the Village Clerk, and the same shall take effect the day after the proof of posting has been filed and recorded, or a later date if expressly provided in the ordinance. If any penalty or forfeiture is imposed by the ordinance, the ordinance shall be published as a Class 1 notice under Chapter 985, Wis. Stats., and shall take effect on the day after its publication, or a later date if expressly provided in the ordinance.

2.40 ETHICS CODE.

(1) **DECLARATION OF POLICY.** The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, there is hereby established a Code of Ethics for all of the Village of Sturtevant officials and employees, whether elected or appointed, paid or unpaid, including members of boards, committees and commissions of the Village. The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the Village of Sturtevant and by directing disclosure by such officials and employees of private financial or other interests in matters affecting the Village. The provisions and purpose of this Code of Ethics and such rules and regulations as may be established are hereby declared to be in the best interests of the Village of Sturtevant.

- (2) DEFINITIONS. The following definitions shall be applicable in this Ethics Code:
- (a) ANYTHING OF VALUE. Any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the Village or political contributions which are reported under Ch. 11 of the Wisconsin Statutes.
 - (b) EMPLOYEE. Any person excluded from the definition of an official who is employed by the Village.
 - (c) FINANCIAL INTEREST. Any interest which shall yield, directly or indirectly, a monetary or other material benefit to the official or employee or to any person employing or retaining the services of the official or employee.
 - (d) GIFT. The payment or receipt of anything of value without valuable consideration.
 - (e) IMMEDIATE FAMILY. An individual's spouse, and an individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support.
 - (f) OFFICIAL. Any person serving in a statutory elected or appointed office and any members appointed to boards, committees or commissions established or appointed by the Village Board and/or Village President pursuant to this Code of Ordinances, whether paid or unpaid.
 - (g) PERSONAL INTEREST. Any interest arising from blood or marriage relationships or from close business or political associations, whether or not any financial interest is involved.
 - (h) PERSON. Any person, corporation, partnership, joint venture, association, company, firm, enterprise, trust or other legal entity.
- (3) RESPONSIBILITY OF PUBLIC OFFICE. Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of the State of Wisconsin, and carry out impartially the laws of the nation, state and Village, to observe in their official acts the highest standards of integrity, and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their prime concern. Their conduct in

both their official and private affairs should be above reproach so as to foster respect for all government.

(4) DEDICATED SERVICE.

- (a) All officials and employees of the Village of Sturtevant should be loyal to the objectives expressed by the electorate and the programs developed to attain these objectives. Appointive officials and employees should adhere to the rules of work performance established as the standard for their position by the appropriate authority.
- (b) Officials and employees should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or officially recognized confidentiality of their work.

(5) FAIR AND EQUAL TREATMENT.

- (a) USE OF PUBLIC PROPERTY. No official or employee shall use or permit the use of Village-owned vehicles, equipment, materials or property for personal convenience or profit without prior approval from the Village Board, unless such services are available to the public generally.
- (b) OBLIGATIONS TO CITIZENS. No official or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

(6) CONFLICT OF INTEREST.

- (a) INTEREST PROHIBITED. No official or employee of the Village shall engage in any business or transaction or shall act in regard to financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of their official duties in the public interest contrary to the provisions of this Ethics Code or which would tend to impair their independence of judgment or action in the performance of their official duties.
- (b) INCOMPATIBLE EMPLOYMENT. No official or employee shall engage in or accept private employment or render service for private interest, when such employment or service is incompatible with the proper discharge of their official duties or would tend to impair their independence of judgment or action in the performance of their official duties, unless otherwise permitted by law and unless disclosure is made as hereinafter provided.

- (c) **DISCLOSURE OF CONFIDENTIAL INFORMATION.** No official or employee shall, without proper legal authorization, disclose confidential information concerning the property, government, or affairs of the Village, nor shall they use such information to advance the financial or other private interest of themselves or others.
 - (d) **REPRESENTING PRIVATE INTERESTS BEFORE VILLAGE AGENCIES OR COURTS.** No official or employee shall appear on behalf of any private person, other than himself, his spouse or minor children, before any Village agency or municipal court. However, a member of the Village Board may appear before Village agencies on behalf of their constituents in the course of their duties as a representative of the electorate or in the performance of public or civic obligations.
- (7) **GIFTS AND FAVORS.**
- (a) No official or employee, personally or through a member of his immediate family, may solicit or accept, either directly or indirectly, from any person anything of value if it could reasonably be expected to influence the official or employee's vote, official actions or judgments, or could reasonably be considered as a reward for any official action or inaction on the part of the official or employee.
 - (b) No official or employee shall accept any one gift with a value of more than \$25.00, or gifts having an aggregate value of more than \$100.00 in any calendar year, from any person if such person:
 - 1. Has or is seeking to obtain a contractual or other business or financial relationship with the Village or the Board; or
 - 2. Conducts operations or activities which are regulated by the Village or the Board; or
 - 3. Has interests which may be substantially affected by the Village or the Board.
 - (c) No official or employee personally, or through a member of his immediately family, shall accept anything of value from any person which may tend to impair the official or employee's independent judgment or action in the performance of his duties, or grant in the discharge of his duties any improper favor, service or thing of value.

- (d) Gifts received at modest ceremonial events--e.g., ground breakings and grand openings--business meals, outings, conferences, and mementos such as coffee cups and candy, are exempt from the \$100.00 calendar year limit, so long as the value of any such gift does not exceed \$25.00 and the distribution of the gift is of a general nature.
 - (e) Gifts received by an official or employee or a member of their immediate family under unusual circumstances shall be referred to the Ethics Board within ten days of receipt for recommended disposition.
- (8) **CONTRACTS WITH THE VILLAGE.** No Village official or employee who, in their capacity as such official or employee, participates in making of a contract in which they have a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring exercise of discretion on his part, shall enter into any contract with the Village unless, within the confines of §946.13 of the Wisconsin Statutes:
- (a) The contract is awarded through a process of public notice and competitive bidding; or
 - (b) The Ethics Board and the Village Board waive the requirement of this section after determining that it is in the best interest of the Village to do so.
- (9) **DISCLOSURE OF INTEREST IN LEGISLATION.**
- (a) Any member of the Village Board who has a financial interest or personal interest in any proposed legislation before the Village Board shall disclose on the records of the Village Board the nature and extent of such interest. Such person shall not participate in debate or discussion or vote for adoption or defeat of such legislation.
 - (b) Any other official or employee who has a financial interest or personal interest in any proposed legislative action of the Village Board and who, directly or indirectly, participates in discussions with or gives an official opinion or recommendation to the Village Board shall disclose on the records of the Village Board the nature and extent of such interest.
- (10) **CAMPAIGN CONTRIBUTIONS.** Campaign contributions shall be reported by all candidates for Village office in strict conformity with the provisions of the Wisconsin Statutes. Any campaign contribution tendered to or accepted by a candidate subsequent to the final statutory report shall be reported to the Ethics Board.

(11) BOARD OF ETHICS CREATED. There is hereby created a Board of Ethics consisting of three members and one alternate who shall serve without compensation unless the Village Board otherwise provides. The members of the Board shall not be elected officials, full-time appointed officials or Village employees, nor shall they be currently serving on any other Village board or commission. An election poll worker is not disqualified from serving on the Board of Ethics. Each member shall be appointed by the Village President and subject to confirmation by the Village Board. The Village Attorney shall furnish the Board with whatever legal assistance is necessary in carrying out its function. Terms of office shall be three years, except that when the initial appointments are made one member shall be appointed for one year, one for two years, and one for three years. The alternate shall serve on the Board when one of the members of the Board is unavailable. The term of the alternate shall be for three years. The Board shall elect its own chairman and vice chairman.

(12) DUTIES OF ETHICS BOARD.

- (a) The Board of Ethics may adopt and develop written guidelines and procedures, which shall be submitted to the Village Board for approval. A copy of such rules shall be on file with the Village Clerk.
- (b) Any person to whom this ordinance applies may apply in writing to the Board of Ethics for an advisory opinion and shall be guided by the opinion rendered. Such person shall have the opportunity to present their interpretation of the facts at issue and of the applicability of provisions of this Ethics Code before the advisory opinion is rendered. The Board's advisory opinion shall be in writing. The Board's deliberations and action upon such applications shall be in meetings not open to the public. Records of the Board's opinions, opinion requests and investigations of violations shall be closed to public inspection. The Board, however, may make such records public with the consent of the individual requesting the advisory opinion. In the event the Board deems it necessary or appropriate, it may request an advisory opinion from the Village Attorney.
- (c) The Board shall investigate any complaint properly filed with it, except as otherwise provided in this Ethics Code.
- (d) The Board shall accept from any person, or make upon its own motion, a verified complaint in writing which shall state the name of the official or employee alleged to have committed a violation of this Ethics Code and which shall set forth the particulars of the alleged violation. The Board shall within ten days of receipt of the verified complaint, or of the filing of a verified complaint made pursuant to the Board's motion, forward a copy of the

complaint to the official or employee who is accused of violating this Ethics Code. If no action on the verified complaint is taken by the Board within sixty days of filing with the Board, the complaint shall be void.

- (e) Following the receipt or filing of a verified complaint upon its own motion, the Board may make preliminary investigations with respect to alleged violation(s) of this Ethics Code. No preliminary investigation of the activities of any official or employee may be initiated unless such official or employee is notified in writing prior to such investigation. The notice shall state the exact nature and purpose of the investigation, the individual's specific actions or activities to be investigated, and a statement of such person's due process rights.
- (f) If, after such investigation, the Board finds probable cause to believe a violation exists, it shall conduct a hearing on the matter which shall be held not more than thirty days after such finding. The Board shall give the accused at least twenty days' notice of the hearing date. Such hearings shall be at closed session unless the accused petitions for a hearing open to the public. The hearing shall be conducted in accordance with the Wisconsin Rules of Criminal Evidence. Counsel for the Board and the accused or his counsel may present evidence, call and examine witnesses and cross-examine witnesses of the other party. Such witnesses shall be sworn by the Board chairman. The chairman is empowered to issue subpoenas to compel attendance of witnesses at such hearing.
- (g) During all stages of any investigation or proceeding conducted under this section, the accused or any persons whose activities are under investigation shall be entitled to be represented by counsel of his own choosing.
- (h) DETERMINATION. Upon conclusion of the hearing the Board shall within twenty days make a written determination as to the existence of a violation of the Code of Ethics by the accused official or employee. The determination shall be signed by all participating Board Members with findings of fact and conclusions of law concerning the propriety of the conduct of the official or employee. If appropriate, the Board shall make a written recommendation as to what action, if any, shall be taken to discipline such official or employee, or what action should be taken to correct the violation. The Board may recommend censure, suspension, removal from office or employment, and/or may impose a forfeiture not to exceed \$1,000 for each violation. Such determination and recommendation shall be mailed to such official or employee within the 20-day period. Copies shall also be delivered to the Village Board for such action as the Village Board may deem proper.

- (i) The affirmative vote of the Ethics Board shall be required for any action taken by the Board, with the exception that action taken by the Board pursuant to a hearing shall require a two-thirds vote.
- (13) **APPLICABILITY OF ETHICS CODE.** This Ethics Code shall be operative in all instances covered by its provisions except when superseded by state law or when the application of a state statutory provision is discretionary but determined by the Ethics Board to more appropriate or desirable. When an ethics complaint is filed against the Village Police Chief, a police officer or a firefighter, the complaint shall be referred to the Village Board for processing in accordance with §61.65 of the Wisconsin Statutes.
- (14) **SEVERABILITY.** If any provision of this ordinance is invalid or unconstitutional, or if the application of this ordinance to any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions of application of this ordinance that can be given effect without the invalid or unconstitutional provision or application.