

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 2, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2025AP143
2025AP841**

Cir. Ct. No. 2023CV1465

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**WILLOW BROOK COURT, LLC, WILLOW BROOK GREENS, LLC AND
BROOKFIELD JUNCTION, LLC,**

PLAINTIFFS-RESPONDENTS-CROSS-APPELLANTS,

V.

CITY OF BROOKFIELD,

DEFENDANT-APPELLANT-CROSS-RESPONDENT.

**WILLOW BROOK COURT, LLC, WILLOW BROOK GREENS,
LLC AND BROOKFIELD JUNCTION, LLC,**

PLAINTIFFS-RESPONDENTS,

V.

CITY OF BROOKFIELD,

DEFENDANT-APPELLANT.

APPEALS and CROSS-APPEAL from orders of the circuit court for Waukesha County: PAUL BUGENHAGEN, JR., Judge.¹ *Reversed and cause remanded with directions; cross-appeal dismissed as moot.*

Before Lazar, P.J., Gundrum, and Grogan, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. In these consolidated appeals, the City of Brookfield (“City”) appeals an order of the circuit court granting summary judgment in favor of Willow Brook Court, LLC, Willow Brook Greens, LLC, and Brookfield Junction, LLC (collectively, “Willow Brook”). The court determined the City improperly billed Willow Brook for sewer service charges and awarded six years’ worth of damages. Willow Brook has filed a cross-appeal arguing the court erred by limiting the damage award to only six years. The City also appeals a court order denying its motion for reconsideration and awarding attorney fees and prejudgment interest.

¶2 On appeal, the City argues Willow Brook failed to exhaust its administrative remedies before the Public Service Commission (“PSC”) and, as a result, the court lacked competency to consider Willow Brook’s complaint. The City also contends it did not improperly bill Willow Brook for sewer service charges and the circuit court erred by failing to grant judgment in favor of the

¹ The written orders under appeal were entered by the Honorable Paul Bugenhagen, Jr., but the oral decisions were made by the Honorable Dennis Moroney as reserve judge.

City. Alternatively, the City argues that any damage award was limited by the notice of injury and claim provisions of WIS. STAT. § 893.80(1d) (2023-24)² and the court erred by awarding six years' worth of damages. The City also asserts the court erred by awarding attorney fees and prejudgment interest. In its cross-appeal, Willow Brook argues the court erred because it should have awarded 15 years' worth of damages.

¶3 For the reasons explained below, we conclude the circuit court erred by granting summary judgment in favor of Willow Brook because the City did not improperly bill Willow Brook for sewer service charges. We therefore reverse the court orders and remand the case for further proceedings consistent with this opinion. We also dismiss the cross-appeal as moot.

BACKGROUND

¶4 Collectively, Willow Brook owns and operates nine apartment complexes on the western side of the City that include 309 residential units. The City bills Willow Brook quarterly for municipal sewer services. In July 2023, Willow Brook served a notice of injury and claim on the City and asserted the City had been billing it excessive municipal sewer service charges. Specifically, Willow Brook argued that, for purposes of the City's sewer service charges, the City had improperly classified its properties as "multi-family (three units or more) residential building or premises" instead of "commercial." In support, Willow Brook cited a portion of the City's municipal code that defined a "commercial user," in part, as a property with more than two residential units. Because Willow

² All references to the Wisconsin Statutes are to the 2023-24 version.

Brook’s properties had more than two residential units, Willow Brook asked the City to classify its properties as commercial and to refund excess sewer service charges previously paid.

¶5 The City disallowed the claim. It advised Willow Brook that it had properly billed Willow Brook as a multi-family (three units or more) residential building or premises. It also advised Willow Brook that the portion of the municipal code that Willow Brook relied on for its argument was inapplicable because that provision related to user charges from the Milwaukee Metropolitan Sewerage District (“MMSD”) and the City did not pass those charges on to properties in the City.

¶6 After receiving the notice of disallowance, Willow Brook brought a declaratory action against the City. Willow Brook asked the circuit court to declare it a “commercial” property for purposes of the City’s sewage service charge and to refund excess sewer service charges based on the misclassification.

¶7 The City moved to dismiss Willow Brook’s lawsuit on the basis that if Willow Brook disagreed with the City’s sewer service charges, it was required, but failed, to exhaust its administrative remedies before the PSC. Willow Brook, in turn, responded that it was “not alleging or pursuing any claims that the City’s charges are unreasonably or unfairly discriminatory.” Instead, it sought declaratory judgment that the City “failed to follow its own ordinances by categorizing [its] apartment complexes as something other than commercial users.” The circuit court denied the City’s dismissal motion.

¶8 Willow Brook and the City then filed cross-motions for summary judgment. Based on the summary judgment materials, the circuit court granted judgment in favor of Willow Brook. The court determined the City should have

classified Willow Brook’s properties as “commercial” for purposes of its sewer service charge and it erred by classifying Willow Brook’s properties as “multi-family (three units or more) residential building or premises.”

¶9 The court also concluded the City’s WIS. STAT. § 893.80 statute of limitations was inapplicable, and it ordered the City to refund six years’ worth of excess sewer service charges that it had previously collected. The circuit court then denied the City’s motion for reconsideration and ordered it to pay prejudgment interest and 50% of Willow Brook’s attorney fees. The City appealed the court’s orders, and Willow Brook filed a cross-appeal regarding the awarded damage amount. We consolidated the appeals for briefing and disposition. Additional facts will be included below.

DISCUSSION

¶10 We begin with some background to the municipal sewage service charges at issue in this case. The City generally provides sewer services to all properties located in the City through the City’s sanitary sewerage system. These services include, for example, building pipes, performing inspections and maintenance, building a wastewater treatment plant, and contracting for wastewater treatment. For sewer services, the City is statutorily permitted to “establish sewerage service charges in an amount to meet all or part of the requirements for the construction, reconstruction, improvement, extension, operation, maintenance, repair, and depreciation of the sewerage system” as well as to pay any indebtedness incurred for those purposes. *See* WIS. STAT. § 66.0821(4)(a). The City is also statutorily permitted to classify the properties it serves “[f]or the purpose of making equitable charges for all services rendered.” *See* § 66.0821(4)(b).

¶11 Pursuant to its statutory grants of authority, the City has classified property within the City and established sewage service charges based on the classifications. BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.040(A). The City’s specific sewer service charges are “established by common council resolution” and are “on file in the office of the city clerk and ... incorporated herein by reference” into the City’s municipal code. See *id.* The City’s 2022 common council resolution, which established the City’s sewer service charges as of July 1, 2022 and was incorporated by reference into the City’s municipal code by virtue of BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.040, was relied on by both parties in this case.

¶12 According to the 2022 resolution, the City, as relevant for appeal, has classifications for both metered-residential property and commercial property. See BROOKFIELD, WIS., RES. 10372-22 (2022); BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.040(A). Metered-residential properties are further classified either as a “single-family residential building or premises,” “duplex (two-family) residential building or premises,” or “multi-family (three units or more) residential building or premises.” *Id.*

¶13 The sewerage service charges for metered-residential and commercial properties in the City generally have two components. First, the properties are charged a volumetric water rate based on actual water use. See *id.* Second, the properties are assessed a “connection charge.” See *id.* The amount of the “connection charge” is based on the properties’ classification and depending on the classification, it can be charged on a “per unit” or “per connection” basis. *Id.*

¶14 As a threshold matter, the City argues the circuit court lacked competency to consider Willow Brook’s declaratory action and should have granted the City’s motion to dismiss because Willow Brook failed to first challenge the City’s sewerage service charges before the PSC. Our cases have established that the PSC has “exclusive jurisdiction” to make initial determinations on whether charges are unreasonable or discriminatory under WIS. STAT. § 66.0821. See *Kimberly-Clark Corp. v. PSC*, 110 Wis. 2d 455, 461, 329 N.W.2d 143 (1983) (citing statutory predecessor to § 66.0821). Here, Willow Brook has repeatedly asserted that it is not challenging the City’s sewer rates. For example, in its appellate brief, Willow Brook advises that it does “not claim that any sewer rates, rules, or practices are unreasonable or discriminatory, as would require them to have filed an administrative complaint with the PSC under ... § 66.0821(5).” This is not a rate case. As such, we first conclude the court did not err by denying the City’s motion to dismiss Willow Brook’s complaint based on its failure to exhaust its administrative remedies before the PSC.

¶15 Because this is not a rate case, it is unnecessary to discuss the City’s specific sewer service rates. However, based on the City’s 2022 resolution, it would be financially beneficial for Willow Brook to be classified for purposes of the City’s sewerage service charge as a “commercial property” instead of a “multi-family (three units or more) residential building or premises.” See BROOKFIELD, WIS., RES. 10372-22 (2022); BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.040(A). The issue presented in this appeal is whether, for purposes of the City’s sewer service charge, which was incorporated by reference into the City’s municipal code, Willow Brook’s properties should be classified as “multi-family (three units or more) residential building or premises” or “commercial” properties.

See *id.* Resolution of this issue requires us to engage in interpretation of the City’s ordinances.

¶16 “We generally interpret ordinances in the same way that we interpret statutes.” *Dwyer v. City of Monona*, 2025 WI App 40, ¶22, 417 Wis. 2d 157, 24 N.W.3d 190. “Under this approach, we give the language of the ordinance ‘its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.’” *Id.* (quoted source omitted).

¶17 “‘Context and structure are also important’ to the meaning of the ordinance.” *Id.* (quoted source omitted). “We interpret the language of the ordinance ‘in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.’” *Id.* (quoted source omitted). We also attempt to give effect to every word, so as not to render any portion of the ordinance superfluous. See *Landis v. Physicians Ins. Co. of Wisconsin*, 2001 WI 86, ¶16, 245 Wis. 2d 1, 628 N.W.2d 893.

¶18 Here, the City argues that it is permitted to classify its properties by virtue of its statutory grant of authority. See WIS. STAT. § 66.0821(4)(b). It states that its sewer service charges, including its classifications, were adopted by common council resolution and incorporated into the City’s code by reference in BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.040(A). The City asserts that because Willow Brook’s properties are multi-family residential properties with three units or more, it properly charged Willow Brook sewer service charges consistent with the “multi-family (three units or more) residential building or premises” classification and rate.

¶19 Willow Brook, in turn, argues as it did in the circuit court that the City is required to classify its properties as “commercial.” In support, Willow Brook points to a different City ordinance where the City adopted and incorporated by reference specific provisions of Chapter 17 of the MMSD rules and regulations relating to user charges, including as relevant for this appeal, MMSD Rule 17.301(3)(a)1. See BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.030. MMSD Rule 17.301(3)(a)1. provides:

(3)(a) The municipal user charge ordinance shall include one of the following rules for *classifying residential structures for user charge purposes* ... :

1. If a structure contains one or two residential units, then each unit is a residential user. *If a structure contains more than two residential units, then the structure is a commercial user.*

Id. (emphasis added); see also BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.030.

¶20 At this point, we pause to provide context regarding the City’s relationship with MMSD, including why it has adopted and incorporated by reference portions of MMSD’s rules into its code. There is a natural boundary separating the Great Lakes and Mississippi River watersheds, known as the subcontinental divide, which happens to run through the City. On the eastern side of the divide, sewage from the City eventually flows to the MMSD, where it is treated and discharged into Lake Michigan. See BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.020. On the western side of the divide, where all of Willow Brook’s properties are located, sewage flows to the Fox River Water Pollution Control Center (“FRWPCC”), where it is treated and discharged into the Fox River and eventually the Mississippi River. See ***id.***

¶21 The City operates the FRWPCC. It does not operate MMSD. Instead, the City has contracted with MMSD to provide wastewater services for the part of the City generally located on the eastern side of the subcontinental divide. See BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.020. MMSD is permitted to collect “user fees” from users of its system. See WIS. STAT. § 200.59(1), (4). Based on its contractual relationship with MMSD, the City has adopted and incorporated by reference into its municipal code specific provisions from MMSD Rules, Chapter 17. See BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.030.

¶22 For example, the City has adopted MMSD Rule 17.101, titled “Purpose,” which generally provides that the purpose of Chapter 17 is to “establish cost recovery systems” and “ensure that the municipalities served by the District have the procedures necessary to administer the cost recovery systems.” See BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.030. The City has also adopted MMSD Rule 17.102, titled “Applicability,” which states that “This chapter applies to all municipalities, all users, and all other persons served by the District.” See BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.030. Additionally, the City has adopted and incorporated by reference all the definitions contained in MMSD Rule 17.103. See BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.030.

¶23 The City’s municipal code also outlines the arrangement between the City, MMSD, and FRWPCC and provides:

There is established a uniform system of user charges throughout the city, modified from time to time, as necessary, to pay operation, maintenance and replacement costs, both as charged by the MMSD and as incurred by the city for the FRWPCC At least biennially, the city will review the wastewater contributions of its users and align its revenue system to recover actual costs.

BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.020. Because of this uniformity provision, the City’s Common Council has adopted the sewage service charges and rates discussed above so that all properties in the City are charged the same for sewage services. See BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.040. Pursuant to affidavits in the record, the City also does not charge properties on the eastern side of the City the MMSD user fee but rather absorbs the MMSD user fee cost.

¶24 Willow Brook argues that because the City has adopted by reference MMSD Rule 17.301(3)(a)1., which states that “for user charge purposes ... If a structure contains more than two residential units, then the structure is a commercial user,” see BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.030, and because Willow Brook’s properties contain more than two residential units, then the City is required to classify its properties as “commercial” for purposes of the City’s sewer service charges. See BROOKFIELD, WIS., RES. 10372-22 (2022); BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.040(A).

¶25 We disagree with Willow Brook. First, Willow Brook is selectively relying on MMSD 17.301(3)(a)1. without considering its context. It ignores that the City has also adopted MMSD’s definitions. The adopted definitions make clear that MMSD 17.301(3)(a)1.’s provision—“if a structure contains more than two residential units, then the structure is a commercial user” is an MMSD classification that is used for MMSD user charges. After all, according to the MMSD definitions as adopted by the City, “[a] commercial user” is defined as “any user that is neither a residential nor an industrial user, as classified by the District for user charge purposes.” MMSD Rule 17.103(2); BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.030. “District,” in turn, which was also adopted by the City, is defined as “the Milwaukee Metropolitan Sewerage District.” See MMSD

Rule 17.103(6); BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.030. It is clear from context that MMSD Rule 17.301(3)(a)1. relates to MMSD user charges, not the City's sewage service charges.

¶26 Willow Brook's interpretation also ignores that it is asking this court to use one ordinance to strike portions of another ordinance. After all, if, pursuant to the MMSD Rule, properties with "more than two residential units" must be classified as "commercial," see MMSD Rule 17.301(3)(a)1.; BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.030, there can be no "multi-family (three units or more) residential building or premises" classification for purposes of the City's sewerage service charge resolution, see BROOKFIELD, WIS., RES. 10372-22 (2022); BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.040(A). We avoid interpretations that would lead to absurd or unreasonable results, and "language is read where possible to give reasonable effect to every word, in order to avoid surplusage." *Kalal*, 271 Wis. 2d 633, ¶46. It is unreasonable to use an MMSD definition, which the City adopted by reference with a purpose of establishing a cost recovery system for the MMSD, see BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.030, to strike a portion of the City's sewage service charge resolution, see BROOKFIELD, WIS., MUNICIPAL CODE § 13.16.040.

¶27 We conclude that MMSD Rule 17.301(3)(a)1., which was incorporated by reference into the City's municipal code, does not apply to the City's "Sewage Service Charges" resolution, which was also incorporated by reference into the City's municipal code. As such, the City did not err by classifying Willow Brook's properties as a "multi-family (three units or more) residential building or premises" as opposed to a "commercial" property and issuing sewage service charges based on the classification. We reverse the circuit court's grant of summary judgment in favor of Willow Brook.

¶28 In light of our conclusion that the circuit court erred by granting judgment in favor of Willow Brook, we need not consider the City’s arguments related to the damage award, the award of prejudgment interest and attorney fees, and the denial of its motion for reconsideration. See **Gross v. Hoffman**, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed); **State v. Blalock**, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases should be decided on the “narrowest possible ground”). Further, because we conclude the court erred by granting judgment in favor of Willow Brook, we dismiss Willow Brook’s cross-appeal relating to the amount of its damage award as moot. We remand the case for further proceedings consistent with this opinion.

By the Court.—Orders reversed and cause remanded with directions; cross-appeal dismissed as moot.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

