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PUBLIC NUISANCES 10.01

PUBLIC NUISANCES

10.01 **PUBLIC NUISANCES PROHIBITED.** No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the City. Any thing, act, occupation, condition, or use of property which has been defined by the Wisconsin Statutes as a public nuisance is a public nuisance under this chapter.

10.02 **PUBLIC NUISANCE DEFINED.** (a) A public nuisance is a thing, act, occupation, condition or use of property which continues for such length of time as to:

- (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
- (2) In any way render the public insecure in life or in the use of property.
- (3) Greatly offend the public morals or decency.
- (4) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway or other public way or the use of public property.

(b) In addition, any violation of the Code of Ordinances of the City of Fond du Lac, Wisconsin, that is not corrected within a reasonable time after notice from the City to a responsible part is a public nuisance.

10.03 **PUBLIC NUISANCES AFFECTING HEALTH.** The following acts, omissions, places, conditions and things are specifically declared to be public health nuisances; but such enumeration shall not be construed to exclude other health nuisances coming within the definition of 10.02:

- (1) **ADULTERATED FOOD.** All decayed, adulterated or unwholesome food or drink sold or offered for sale to the public.
- (2) **UNBURIED CARCASSES.** Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within 24 hours after death.
- (3) **BREEDING PLACES FOR INSECTS OR VERMIN.** Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material in which flies, mosquitoes, disease-carrying insects, rats or other vermin can breed.
- (4) **STAGNANT WATER.** All stagnant water in which mosquitoes, flies or other insects can multiply.

PUBLIC NUISANCES 10.03(5)

(5) **PRIVY VAULTS AND GARBAGE CANS.** Privy vaults and garbage cans which are not flytight.

(6) **NOXIOUS ODORS, ETC.** Any use of property, substances or things within the City emitting or causing any foul, offensive, noisome, noxious or disagreeable odors, gases, effluvia or stenches repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of persons within the City.

(7) **STREET POLLUTION.** Any use of property which causes any noxious or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the City.

10.04 PUBLIC NUISANCES OFFENDING MORALS AND DECENCY. The following acts, omissions, places, conditions and things are specifically declared to be public nuisances offending public morals and decency; but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of . 10.02:

(1) **UNLICENSED SALE OF LIQUOR AND BEER.** All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided for by this Municipal Code.

(2) **CONTINUOUS VIOLATION OF CITY ORDINANCES.** Any place or premises within the City where City ordinances or State laws relating to public health, safety, peace, morals or welfare are repeatedly and intentionally violated.

(3) **ILLEGAL DRINKING.** Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of State laws.

10.05 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY. The following acts, omissions, places, conditions and things are declared to be public nuisances affecting peace and safety; but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the definition of . 10.02:

(1) **DANGEROUS SIGNS, BILLBOARDS, ETC.** All signs, billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated or constructed as to endanger the public safety.

(2) **ILLEGAL BUILDINGS.** All buildings erected, repaired or altered in violation of City ordinances relating to materials and manner of construction of buildings and structures within the City.

PUBLIC NUISANCES 10.05(3)

(3) **UNAUTHORIZED TRAFFIC SIGNS.** All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing which purport to be or may be mistaken as official traffic control devices or railroad signs or signals or which, because of their color, location, brilliance or manner of operation, interfere with the effectiveness of any such device, sign or signal.

(4) **OBSTRUCTION OF INTERSECTIONS.** All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.

(5) **LOW-HANGING TREE LIMBS.** All limbs of trees which project over and less than 10' above any public sidewalk, street or other public place.

(6) **DANGEROUS TREES.** All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.

(7) **FIREWORKS.** All use or display of fireworks except as provided by State laws and City ordinances.

(8) **DILAPIDATED BUILDINGS.** All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, Unsanitary or otherwise unfit for human use.

(9) **LOW-HANGING WIRES AND CABLES.** All wires and cables over streets, alleys or public grounds which are strung less than 15' above the surface thereof.

(10) **NOISY ANIMALS OR FOWL.** The keeping or harboring of any animal or fowl without taking sufficient measures to prevent noise, barking, fighting or howling, which would unreasonably disturb the peace and quiet of the neighborhood. The testimony of two or more adult persons of different households to the effect that the noise, barking, fighting or howling of an animal or fowl identified by them has caused them great annoyance on repeated frequent occasions shall be prima facie evidence that the person owning or keeping the animal or fowl has failed to take the measures required hereby and that the result thereof has been the unreasonable disturbance of the peace and quiet of the neighborhood.

(11) **OBSTRUCTIONS OF STREETS; EXCAVATIONS.** All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the ordinances of the City but including those which, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished or which do not conform to the permit.

PUBLIC NUISANCES 10.05(12)

(12) UNLAWFUL ASSEMBLIES. Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.

(13) BLIGHTED BUILDINGS AND PREMISES. Premises existing within the City which are blighted because of faulty design or construction, failure to maintain them in a proper state of repair, improper management, or due to the accumulation of junk outside of any building or within an open porch or a vehicle used for storage purposes, or other unsightly debris, structurally unsound fences, construction debris or materials, trash, wood, brick, appliances and airtight containers, and other items which may depreciate property values or be detrimental to the appearance, neatness, health and cleanliness of the neighborhood, provided that nothing in this subsection shall prohibit reasonable storage of construction materials during the construction of any building or structure.

(14) UNCOVERED/OPEN EXCAVATIONS. All open and unguarded pits, wells, excavations or unused basements freely accessible from any public street, alley or sidewalk.

(15) JUNK VEHICLES. All junked, disassembled, inoperable or wrecked motor vehicles, or parts thereof, which have been allowed to remain outside of any building upon public or private property for a period in excess of ten (10) days, unless in connection with a permitted automotive sales or repair business located in a properly zoned area.

10.051 **CHRONIC NUISANCE PREMISES.** (1) DEFINITIONS. The following terms shall be defined as follows in this subchapter.

1. Chief. The Chief of Police or his or her designee.
2. Enforcement Action. An arrest or the issuance of a citation.
3. Nuisance Activity. Any of the following activities, behaviors, or conduct occurring on a premises:
 - a. An act of Harassment, as defined in §947.013, Wis. Stats.
 - b. Disorderly Conduct, as defined in §947.01, Wis. Stats.
 - c. Battery, Substantial Battery, or Aggravated Battery, as defined in §940.19, Wis. Stats.

PUBLIC NUISANCES 10.051(3)d

- d. Lewd and Lascivious Behavior, as defined in §944.20, Wis. Stats.
 - e. Prostitution, as defined in §944.30, Wis. Stats.
 - f. Theft, as defined in §943.20, Wis. Stats.
 - g. Receiving Stolen Property, as defined in §943.34, Wis. Stats.
 - h. Arson, as defined in §943.02, Wis. Stats.
 - i. Possession, Manufacture, or Delivery of a Controlled Substance or related offenses, as defined in Ch. 961, Wis. Stats.
 - j. Gambling, as defined in §945.02, Wis. Stats.
 - k. Animal violations, as defined in Chapter 12 of the Code of Ordinances of the City of Fond du Lac.
 - l. Trespassing, as defined in §943.13 and §943.14, Wis. Stats.
 - m. Weapons violations, as defined in Chapter 9.09 of the Code of Ordinances of the City of Fond du Lac.
 - n. Noise violations, as defined in Section 9.07 of the Code of Ordinances of the City of Fond du Lac.
 - o. Any conspiracy to commit, as defined in §939.31, Wis. Stats., or attempt to commit, as defined in §939.32, Wis. Stats., any of the activities, behaviors, or conduct enumerated in subdivisions 3.a. through n. above.
 - p. The execution of arrest or search warrants at a particular location.
 - q. Alcohol violations, as defined in Chapter 12 of the Code of Ordinances of the City of Fond du Lac, and §125.07, Wis. Stats.
 - r. Obstructing or Resisting an Officer, as defined in §946.41, Wis. Stats.
 - s. City of Fond du Lac Inspection-related calls where the Police Department responds.
4. Owner. The owner of the premises and his or her agents.
5. Premises. An individual dwelling unit, an apartment building (all units included as one premises), or an individual business premises and associated common areas.

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10.052 NOTICE. Whenever the Chief determines that three or more nuisance activities described in 10.051(3) resulting in enforcement action have occurred at a premises during a 12-month period, the Chief may notify the premises owner in writing. In calculating the requisite nuisance activities, the Chief may count separate qualifying nuisance incidents resulting in enforcement action occurring on the same day (as long as they are distinct in time) or different days, but shall never count nuisance activities that were reported by the owner of the premises. The notice shall contain the street address or legal description sufficient to identify the premises, a description of the nuisance activities that have occurred at the premises, a statement indicating that the cost of future enforcement may be assessed as a special charge against the premises, and a notice as to the appeal rights of the owner. The notice shall be delivered pursuant to Section 10.10 (3) of the Code of Ordinances of the City of Fond du Lac.

10.053 ABATEMENT PLAN. Any owner receiving notice pursuant to Sec. 10.052 shall meet with the Chief or his/her designee, within 10 days of receipt of such notice. The parties shall review the problems occurring at the property. Within 20 days of this meeting, the owner shall submit to the Chief or his/her designee, a written abatement plan to end the nuisance activity on the property. The plan shall also specify a name, address, and telephone number of a person living within 60 miles of the property who can be contacted in the event of further police, fire, or inspection contact.

10.054 ADDITIONAL NUISANCE ACTIVITY. Whenever the Chief determines that additional nuisance activity has occurred at a premises for which notice has been issued pursuant to Section 10.052 of the Code of Ordinances of the City of Fond du Lac, Wisconsin that this nuisance activity has occurred not less than 30 days after notice has been issued, and that reasonable efforts have not been made to abate the nuisance activity, the Chief may calculate the cost of police response and enforcement for this and any subsequent nuisance activities and cause such charges and administrative costs to be assessed and collected as a special charge.

10.055 PENALTY. In addition to any other penalty or remedy provided by law:

(1) **FIRST OFFENSE.** Any person who shall violate any provision of Section 10.053 or Section 10.054 or any regulation, rule, or order made thereunder shall forfeit not less than \$200 nor more than \$1,000.

PUBLIC NUISANCES 10.055(2)

(2) SECOND AND SUBSEQUENT OFFENSES. Any person who shall violate any provision of Subsection 10.053 or Subsection 10.054 or any regulation, rule, or order made hereunder within 24 months after committing a previous violation of Subsection 10.053 or Subsection 10.054 or any regulation, rule, or order made thereunder shall forfeit not less than \$500 or more than \$2,000.

10.06 **TREES BEARING COTTON-LIKE SUBSTANCE.** (1) All trees less than 4" in diameter not on groomed or cultivated lawns or yards, bearing a cotton-like substance that can be carried by air currents, are hereby declared to be a public nuisance and the owner of any piece or parcel of land in the City shall remove all such trees. No person shall sell, plant or otherwise allow to grow any tree as defined herein.

(2) In the event such tree is found growing or reported in the City, such owner shall be issued an order to remove such tree within 10 days after notification. If after 10 days the owner has failed to comply with the order, the Director of Public Works shall cause such trees to be removed and the cost of the removal shall be chargeable to the owner of the property and, if not paid within 30 days after the work is completed, the same shall be certified by the Director of Public Works to the City Clerk and shall be taxed and levied as a special assessment charge upon the real estate in the manner provided for the taxing of special assessments against the land.

10.061 **TREE OR PLANT INSECT AND DISEASES, INFECTIONS AND OTHER HAZARDOUS CONDITIONS RELATING TO TREES** (1) DECLARED A PUBLIC NUISANCE. Any tree or shrub or part thereof which: (i) by reason of its condition interferes with the use of any public area; or (ii) is infected with a plant disease or insect infestation which endangers life, health, safety and/or property on public and/or private premises; or (iii) for any other reason endangers the life, health, safety and/or property on public and/or private premises, is hereby declared a public nuisance.

(2) EXAMPLES OF PUBLIC NUISANCE. Without limiting the generality of Section 10.061(1), public nuisances include:

- (a) any dead tree;
- (b) any part of a tree that endangers life, health, safety and/or property;
- (c) any elm tree or parts thereof infected with the Dutch Elm Disease fungus or which harbors any carrier of the same, such as elm bark beetles, *scolitus multistriatus* (Eichb) or *hylurgopinus rufipes* (Marsh);

PUBLIC NUISANCES 10.061(2)(d)

(d) any oak tree infected with the Oak Wilt fungus (*ceratocystis fagacearum*) or which harbors any carrier of the same; and

(e) any ash tree which is infected with Emerald Ash Borer.

(3) INSPECTION. The Director of Public Works or his agents shall inspect all premises and places with reasonable cause within the City to determine whether any public nuisance exists. The Director of Public Works or his agents shall also inspect or cause inspection of any trees, shrub, or plants reported or suspected to be infected with an injurious insect or disease.

(4) ABATEMENT. If the Public Works Director or his agents determine that the dead or infested tree or plant is a public nuisance, he may issue a notice to the property owner to abate the public nuisance. The notice shall identify the public nuisance whether it is by means of removal, pruning part thereof, or other treatments. The Director of Public Works or his agent shall give a reasonable time for the property owner to abate the public nuisance. The amount of time given to the property owner to abate the nuisance shall be state in the notice.

10.07 **PLANT AND WEED CONTROL.** (1) WEEDS DECLARED A NUISANCE. No person shall allow or permit any weeds, such as Jimson, Burdock, Ragweed, Thistle, Cocklebur or other weeds of a like kind, to grow in any lot or tract of land in the City. To permit any such weeds to grow or remain in any such place is hereby declared to be a nuisance.

(2) HEIGHT. No person shall permit any weeds, grass or plants, other than trees, bushes, flowers or other ornamental plants, to grow to a height to exceed 6" anywhere in the City.

(3) BARBERRY BUSHES. No person shall plant or permit the growth of the bush of the species of Tall, Common or European Barberry, additionally known as beris vulgaris, or its horticultural varieties within the City.

(4) REMOVAL NOTICE. The City Manager shall appoint one or more Weed Commissioners on or before May 15 each year and such Commissioners shall take the official oath which shall be filed in the office of the City Clerk and shall hold office for one year and until a successor is appointed and qualified. The Weed Commissioners shall carefully investigate, concerning the existence of growing matter as shown in the subsections above and which are in violation of this section and shall by regular mail give written notice of a possible violation of this section to the owner, occupant or person having control of the land where such growing matter is found to cut, destroy and remove and to demand the abatement of the nuisance within 7 days.

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10.10 **ABATEMENT OF PUBLIC NUISANCES.** (1) ENFORCEMENT. The Chief of Police, Fire Chief, Director of Public Works, Chief Building Inspector, or other agent of the City so designated shall enforce those provisions of this chapter that come within the jurisdiction of their offices and they shall make inspections and inspections upon complaint to insure that such provisions are not violated. No action shall be taken under this section to abate a public nuisance unless the officer has inspected or caused to be inspected the premises where the nuisance is alleged to exist and has satisfied himself that a nuisance does in fact exist.

(2) SUMMARY ABATEMENT. (a) Order of Abatement. If the inspecting officer determines that a public nuisance exists within the City and that there is immediate danger to the public health, safety, welfare, peace or order, he/she may, without notice or hearing, issue an order reciting the existence of a public nuisance constituting imminent danger to the public and requiring immediate action be taken as he/she deems necessary to abate the nuisance. Notwithstanding any other provisions of this article, the order shall be effective immediately. Any person to who such order is directed shall comply with the order immediately, to abate or remove such nuisance within the specified time period.

(b) Abatement by City. Whenever the owner or occupant shall refuse or neglect to remove or abate the condition described in the order, the inspecting officer shall, in his discretion, enter upon the premises and cause the nuisance to be removed or abated and the City shall recover the expenses incurred thereby from the owner or occupant of the premises or from the person who has caused or permitted the nuisance.

(3) NONSUMMARY ABATEMENT. (a) Order of Abatement. If the inspecting officer determines that a public nuisance exists on private premises but that such nuisance does not threaten immediate danger to the public health, safety, welfare, peace or order, he/she shall issue an order reciting the existence of a public nuisance and requiring the owner or occupant of the premises to remove or abate the condition described in the order within the time period specified therein which shall be no shorter than 30 days. The order shall be served personally on the owner of the building, as well as the occupant if different from the owner and applicable to the described nuisance, or, at the option of the inspecting officer, the notice may be mailed to the last known address of the persons, to be served by registered mail with receipt. If the owner or occupant cannot be served, the order may be served by posting it on the main entrance of the premises and by publishing a Class 3 Notice under Chapter 985 of the Wisconsin Statutes. The time limit specified in the order shall run from the date of service or publication.

PUBLIC NUISANCES 10.10(3)(b)

(b) Abatement by City. If the owner or occupant fails or refuses to comply with the time period prescribed, the inspecting officer shall enter upon the premises and cause the nuisance to be removed or abated and the City shall recover the expenses incurred thereby from the owner or the occupant of the premises or from the person who has caused or permitted the nuisance.

(c) Remedy from Order. Any person affected by such order shall, within thirty (30) days of service or publication of the order, apply to the circuit court for an order restraining the City, its agent, and employees from entering on the premises and abating or removing the nuisance, or be forever barred. The court shall determine if the City has met its burden of proving the reasonableness of the order for abatement of the nuisance.

(4) ABATEMENT IN ACCORDANCE WITH STATE LAW. Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the City or its officials in accordance with the laws of the State of Wisconsin.

10.11 COST OF ABATEMENT. In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abatement or removal of a public nuisance by the City shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance; and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

10.12 PENALTY. Except as otherwise provided, any person who shall violate any provision of this chapter or any regulation, rule or order made hereunder, or permit or cause a public nuisance shall be subject to a penalty as provided in §25.04 of this Municipal Code.

