

CHAPTER 25
CONSTRUCTION AND EFFECT OF ORDINANCES
Table of Contents

	<u>Page</u>
25.01 Rules of Construction	1
(1) Wisconsin Statutes.....	1
(2) Gender, Singular and Plural.....	1
(3) Person	1
(4) May and Shall.....	1
(5) Acts of Agents	1
(6) Verbs	1
(7) Term	1
25.02 Conflict and Separability	1
(1) Conflict of Provisions.....	1
(2) Separability of Code Provisions	1
25.03 Clerk to File Documents Incorporated by Reference	2
25.04 Penalty Provisions	2
(1) General Penalty.....	2
(a) First Offense.....	2
(b) Second Offense	2
(2) Continued Violations	2
(3) Execution Against Defendant's Property.....	2
(4) Citation Method of Enforcement	2
(a) Statutory Authorization.....	2
(b) Contents of Citation.....	2
(c) Schedule of Deposits	4
(d) Issuance of Citations.....	4
(e) Procedure.....	4
(f) Nonexclusivity	4
(g) Severability.....	5
25.05 Repeal of General Ordinances.....	5
25.06 Effect of Repeals	6
25.07 Title; Effective Date; Citation	6
25.08 Keeping Code Current; Revisor's Amendments	6

CONSTRUCTION AND EFFECT OF ORDINANCES 25.01

25.01 **RULES OF CONSTRUCTION.** In the construction of this Code of Ordinances, the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the ordinance:

(1) **WISCONSIN STATUTES.** All references to "Wisconsin Statutes" or "Wis. Stats." means the 1991-92 Wisconsin Statutes and includes the 1993-94 biennial session.

(2) **GENDER, SINGULAR AND PLURAL.** Every word in this Code imparting the masculine gender may extend and be applied to females as well as males, and every word imparting the singular number only may extend and be applied to several persons or things as well as to one person or thing; provided these rules of construction shall not be applied to any provision which contains any express language excluding such construction or when the subject matter or context of such provision may be repugnant thereto.

(3) **PERSON.** The word "person" extends and applies to natural persons, firms, corporations, associations, partnerships or other bodies politic and to all entities capable of being sued, unless plainly inapplicable.

(4) **MAY AND SHALL.** "May" is permissive; "shall" is mandatory.

(5) **ACTS OF AGENTS.** When a provision requires an act to be done which may by law as well be done by an agent as by the principal, such requirement shall be construed to include all such acts when done by an authorized agent.

(6) **VERBS.** The use of any verb in the present tense shall not preclude the interpretation of the verb in the future tense where appropriate.

(7) **TERM.** The word "term" when referring to limits on the length of service for a City board, committee, commission or authority member shall mean the full term established by ordinance, resolution or statute. Service of less than a full term shall not be considered a "term" for the purpose of limiting length of service.

25.02 **CONFLICT AND SEPARABILITY.** (1) **CONFLICT OF PROVISIONS.** If the provisions of the different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions arising out of the subject matter of such chapter.

(2) **SEPARABILITY OF CODE PROVISIONS.** If any section, subsection, sentence, clause or phrase of the Code is for any reason held to be invalid or unconstitutional by reason of a decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof. The Board hereby declares that it would have passed this Code and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions may be declared invalid or unconstitutional.

CONSTRUCTION AND EFFECT OF ORDINANCES 25.03

25.03 **CLERK TO FILE DOCUMENTS INCORPORATED BY REFERENCE.** Whenever in this Code any standard, code, rule, regulation or other written or printed matter is adopted by reference, it shall be deemed incorporated in this Code as if fully set forth herein and the Clerk shall file, deposit and keep in his office a copy of the code, standard, rule, regulation or other written or printed matter as adopted. Materials so filed, deposited and kept shall be public records open for examination with proper care by any person during the Clerk's office hours, subject to such orders or regulations which the Clerk may prescribe for their preservation.

25.04 **PENALTY PROVISIONS.** (1) **GENERAL PENALTY.** Except as otherwise provided, any person who shall violate any of the provisions of this Code shall, upon conviction of such violation, be subject to a penalty, which shall be as follows:

(a) **First Offense.** Any person who shall violate any provision of this Code shall, upon conviction thereof, forfeit not less than \$5 nor more than \$500, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the county jail until such forfeiture and costs are paid, but not exceeding 90 days.

(b) **Second Offense.** Any person found guilty of violating any ordinance or part of an ordinance of this Code who has previously been convicted of a violation of the same ordinance within one year shall, upon conviction thereof, forfeit not less than \$50 nor more than \$500 for each such offense, together with the costs of prosecution, and in default of payment of such forfeiture and costs shall be imprisoned in the county jail until such forfeiture and costs are paid, but not exceeding 6 months.

(2) **CONTINUED VIOLATIONS.** Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Code shall preclude the City from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.

(3) **EXECUTION AGAINST DEFENDANT'S PROPERTY.** Whenever any person fails to pay any forfeiture and costs of prosecution upon the order of any court for violation of any ordinance of the City, the court may, in lieu of ordering imprisonment of the defendant, or after the defendant has been released from custody, issue an execution against the property of the defendant for such forfeiture and costs.

(4) **CITATION METHOD OF ENFORCEMENT.** (a) **Statutory Authorization.** Pursuant to §66.119, Wis. Stats., the City of Fond du Lac hereby elects to use the citation method of enforcement of ordinances, including those ordinances for which a statutory counterpart exists.

(b) **Contents of Citation.**

1. The citation shall contain the following:

a. The name and address of the alleged violator.

CONSTRUCTION AND EFFECT OF ORDINANCES 25.04(4)(b)1.b.

- b. The factual allegations describing the alleged violation.
- c. The time and place of the offense.
- d. The section of the ordinance violated.
- e. A designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so.
- f. The time at which the alleged violator may appear in court.
- g. A statement which in essence informs the alleged violator:
 - 1) That the alleged violator may make a cash deposit of a specified amount to be mailed to a specified official within a specified time.
 - 2) That if the alleged violator makes such a deposit, he or she need not appear in court unless subsequently summoned.
 - 3) That if the alleged violator makes a cash deposit and does not appear in court, he or she either will be deemed to have tendered a plea of no contest and submitted to a forfeiture, a penalty assessment imposed by §165.87, a jail assessment imposed by §302.46(1) and any applicable domestic abuse assessment imposed by §973.055(1) not to exceed the amount of the deposit or will be summoned into court to answer the complaint if the court does not accept the plea of no contest.
 - 4) That if the alleged violator does not make a cash deposit and does not appear in court at the time specified, the court may issue a summons or a warrant for the defendant's arrest or consider the nonappearance to be a plea of no contest and enter judgment under sub. (3)(d), or the municipality may commence an action against the alleged violator to collect the forfeiture, the penalty assessment imposed by §165.87, the jail assessment imposed by §302.46(1) and any applicable domestic abuse assessment imposed by §973.055(1).
 - 5) That if the court finds that the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and that the violation resulted in damage to the property of or physical injury to a person other than the alleged violator, the court may summon the alleged violator into court to determine if restitution shall be ordered under §800.093.
- h. A direction that if the alleged violator elects to make a cash deposit, the alleged violator shall sign an appropriate statement which accompanies the citation to indicate that he or she read the statement required under subd. 7 and shall send the signed statement with the cash deposit.
- i. Such other information as may be deemed necessary.

CONSTRUCTION AND EFFECT OF ORDINANCES 25.04(4)(c)1.

(c) Schedule of Deposits.

1. The following schedule of cash deposits is established for use with citations issued under this ordinance.

For violations of Chapter 5, §§5.20-5.40 (Fire Protection); Chapter 10 (Public Nuisance); Chapter 11 (Public Health); Chapter 11 (Revised Zoning Code); Chapter 12, §12.28 (Animal Licensing and Regulations); Chapter 13 (Municipal Utilities); Chapter 14, §14.01-14.25 (Building Code); Chapter 14, §14.30-14.55 (Plumbing Code); Chapter 15 (Housing & Maintenance Code); Chapter 16 (Electrical Code); Chapter 18 (Subdivision and Platting); and Chapter 21 (Floodplain Zoning Code):

First Offense	- \$175 plus penalty provisions and court costs.
Second Offense within 12 months	- \$225 plus penalty provisions and court costs.

2. All other citations issued under this ordinance shall carry a cash deposit as prescribed in applicable sections of the Code of Ordinances.

3. Deposits shall be made in cash, money order or certified check to the Treasurer of Clerk of Circuit Court, or other official designated by the City, who shall provide a receipt therefor.

(d) Issuance of Citations. Law Enforcement Officer. Any law enforcement officer may issue citations authorized under this ordinance. In addition, the following are hereby designated as City officials who may issue citations with respect to ordinances directly related to their official responsibilities:

- | | |
|-----------------------------|---|
| Animal Control Officer | Electrical/Assistant Building Inspector |
| Chief Building Inspector | Fire Department Shift Commanders |
| City Engineer | Fire Inspectors |
| Clearwater Inspector | Plumbing and Heating Inspector |
| Code Enforcement Officer I | Principal Planner |
| Code Enforcement Officer II | Truancy Ordinance Enforcement Officer |
| Director of Public Works | Wastewater Operations Manager |

(e) Procedure. §66.119(3), Wis. Stats., relating to violator's options and procedure on default, is hereby adopted and incorporated herein by reference.

(f) Nonexclusivity.

1. Other Ordinance. Adoption of this ordinance does not preclude the Council from adopting any other ordinance or providing for the enforcement of any other law ordinance relating to the same or other matters.

CONSTRUCTION AND EFFECT OF ORDINANCES 25.04(4)(f)2.

2. Other Remedies. The issuance of a citation hereunder shall not preclude the City or any authorized officer from proceeding under any other ordinance or law or by any other enforcement method to enforce any ordinance, regulation or order.

(g) 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 provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or application.

25.05 REPEAL OF GENERAL ORDINANCES. All ordinances heretofore adopted by the City Council are hereby repealed, except all ordinances or parts of ordinances relating to the following subjects and not conflicting with any of the provisions of this Code:

(1) The issuance of corporate bonds and notes of the City of whatever name or description.

(2) The establishment of grades, curb lines and widths of sidewalks in the public streets and alleys.

(3) The fixing of salaries of public officials and employees.

(4) Rights, licenses or franchises or the creation of any contract with the City.

(5) The lighting of streets and alleys.

(6) That portion of subsection 6, defining municipal wards as they exist within the City of Fond du Lac is hereby amended by adopting File No. 2001-109, a copy of which is attached hereto and made a part hereof.

(7) The naming and changing of names of streets, alleys, public grounds and parks.

(8) The letting of contracts without bids.

(9) Tax and special assessment levies.

(10) Releases of persons, firms or corporations from liability.

(11) Construction of public works.

(12) Water, sewer and electric rates, rules and regulations and sewer and water main construction.

(13) Budget ordinances, resolutions and actions.

CONSTRUCTION AND EFFECT OF ORDINANCES 25.06(1)

25.06 **EFFECT OF REPEALS.** The repeal or amendment of any section or provision of this Code or of any other ordinance or resolution of the Council shall not:

(1) By implication be deemed to revive any ordinance not in force or existing at the time such repeal or amendment takes effect.

(2) Affect any vested right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or amended, unless the privilege of repealing such obligation or privilege has been reserved by the City.

(3) Affect any offense committed, or penalty or forfeiture incurred, previous to the time when any ordinance is repealed or amended; except when any forfeiture or penalty has been mitigated by the provisions of any ordinance, such provisions shall apply to and control any judgment to be pronounced after such ordinance takes effect for any offense committed before that time.

(4) Affect any prosecution for any offense, or the levy of any penalty or forfeiture pending at the time when any ordinance aforesaid is repealed or amended; but the right of action shall continue and the offender shall be subject to the penalty as in all respects, as if such ordinance had not been repealed; except all such proceedings had after the time this Code takes effect shall be conducted according to the provisions of this Code.

25.07 **TITLE; EFFECTIVE DATE; CITATION.** These ordinances shall be known as the "Code of Ordinances of the City of Fond du Lac, Wisconsin" and shall take effect from and after passage and publication as provided in ¶66.035, Wis. Stats. All references thereto shall be cited by section number (example: ¶13.06, Code of Ordinances of the City of Fond du Lac).

25.08 **KEEPING CODE CURRENT; REVISOR'S AMENDMENTS.** As each ordinance or resolution affecting the Code of Ordinances becomes effective, the Clerk shall forward such ordinance or resolution to the Revisor, who shall incorporate them into the Code of Ordinances. The Revisor shall make no substantive changes to such ordinances and resolutions but may renumber, rearrange and edit them without first submitting them to the City Council; and such rearranging, renumbering and editing shall not affect the validity of such ordinances and resolutions or the provisions of this Code of Ordinances affected thereby.

Historical Updates			
Page	Paragraph	Ordinance No.	Date Adopted
2-6	25.04(4)	2783	05/24/95
1	25.01(7)	2836	05/08/96
4	25.04(4)(c)1. & 25.04(4)(d)	2841	06/12/96
4	25.04(4)(c)1. & 25.04 (4)(d)	2912	10/22/97
4	25.04(4)(c)1. & 25.04(4)(d)	2942	09/09/98
5	25.05(6)	3064	07/25/01
4	25.04(4)(c)1.	3135	01/08/03
4	25.04(4)(c)	3164	06/11/03
4	25.04(4)(d)	3170	08/13/03
4	25.04(4)(c)1.	3181	10/22/03
4	25.04(4)(c)1.	3272	11/22/05