

CHAPTER 17

PUBLIC NUISANCES

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PUBLIC NUISANCES

17.01 PUBLIC NUISANCES PROHIBITED.

No person shall erect, contrive, continue, cause, maintain or permit to exist any public nuisance within the City of Middleton.

17.02 DEFINITIONS.

(1) Public Nuisance. A public nuisance is a thing, act, occupation condition or use of property which shall continue for such a length of time as to:

(a) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public; or

(b) In any way render the public insecure in life or in the use of property; or

(c) Greatly offend the public morals or decency; or

(d) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property.

(2) Public Nuisances Affecting Health. The following acts, omissions, places, conditions and things are hereby specifically declared to be public health nuisances, but such enumeration shall not be construed to exclude other health nuisances coming within the definition of subsection (1) of this section:

(a) All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.

(b) Carcasses or excrement of animals, birds or fowl which are not buried or otherwise disposed of in a sanitary manner within twenty four (24) hours.

(c) Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material whatsoever in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed.

(d) All stagnant water in which mosquitoes, flies or other insects can multiply.

(e) Privy vaults and garbage cans which are not fly tight.

(f) All noxious weeds and other rank growth of vegetation.

(g) All animals running at large.

(h) The escape of smoke, soot, cinders, noxious acids, fumes, gases, dust, fly ash, industrial dust or other atmospheric pollutants within the City limits or within one mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property in the City.

(i) The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage, creamery or industrial wastes or other substances.

(j) Any use of property, substances or things within the City emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, gases, dust, effluvia or stench extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the City.

(k) All abandoned wells not securely covered or secured from public use.

(l) Any use of property which shall cause any nauseous or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the City.

(m) Any violation of Section 6.09 of this Code of Ordinances.

(3) Public Nuisances Offending Morals and Decency. The following acts, omissions, places conditions and things are hereby 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 subsection (1) of this section.

(a) All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual intercourse or gambling.

(b) All gambling devices and slot machines.

(c) All places where intoxicating liquor or fermental malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided for by the ordinances of the City.

(d) Any place or premises within the City where City ordinances or State laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.

(e) Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of the laws of the State or City.

(4) Public Nuisances Affecting Peace and Safety. The following acts, omissions, places, conditions and things are hereby declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting peace or safety coming within the provisions of subsection (1) of this section:

(a) All signs and billboards, awnings or 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.

(b) All buildings erected, repaired or altered within the fire limits of the City in violation of the provisions of the ordinances of the City, relating to materials and manner of construction of buildings and structures within said District.

(c) 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 an official traffic control device, railroad sign or signal or which because of its color, location, brilliance or manner of operation interferes with the effectiveness of any such device, sign, or signal.

(d) 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.

(e) All limbs of trees which project over and less than fourteen (14) feet above the surface of a public sidewalk or street or less than ten (10) feet above any other public place.

(f) All use of display of fireworks except as provided by the laws of the State and ordinances of the City.

(g) All buildings or structures so old, dilapidated, or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.

(h) All wires over streets, alleys or public grounds which are strung less than fifteen (15) feet above the surface thereof.

(i) All loud, discordant and unnecessary noises or vibrations of any kind.

(j) The keeping or harboring of any animal or fowl which by frequent or habitual howling, yelping, barking, crowing or making of other noises shall greatly annoy or disturb a neighborhood or any considerable number of persons within the City.

(k) 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 or 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.

(l) All open and unguarded pits, wells, excavations or unused basements freely accessible from any public street, alley or sidewalk.

(m) All abandoned refrigerators or iceboxes from which the doors and other covers have not been removed or which are not equipped with a device for opening from the inside.

(n) 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.

(o) Repeated or continuous violations of the ordinances of the City or laws of the State relating to the storage of flammable liquids.

(p) All snow and ice not removed or sprinkled with ashes, sawdust or sand as provided in section 8.06 of this Code.

(q) Every owner or operator shall improve and maintain all property under his control to comply with the following minimum requirements.

Graffiti is prohibited. Graffiti shall be removed by the property owner or by the City at the property owner's expense.

Graffiti. Any unauthorized drawing, figure, inscription, or painting appearing on sidewalks, streets, walls or any other place in public view.

(5) Public Nuisances Offending Public Welfare Generally. The following acts, omissions, places, conditions and things are hereby specifically declared to be public nuisances offending the public welfare, but such enumeration shall not be construed to exclude other nuisances offending the public welfare coming within the definition of subsection (1) of this section.

(a) Except where otherwise expressly authorized by law, storage of junk or discarded property including automobiles, automobile parts, trucks, tractors, refrigerators, furnaces, washing machines, stoves, machinery or machinery parts, wood, bricks, cement blocks, or other unsightly debris which tend to depreciate property values in the immediate vicinity. In this section, junked or discarded automobiles shall include any unlicensed or inoperable vehicle or any vehicle that may not otherwise be lawfully operated upon any public highway.

(b) Use of outdoor solid fuel fire heating devices or solid fuel units. An outdoor solid fuel fire heating device or solid fuel unit is any outdoor device or structure designed for solid fuel combustion for the purpose of providing indoor heat to a residence or other building,

including, but not limited to, solid fuel fired stoves and combination fuel furnaces or boilers which burn solid fuel such as wood or coal. A solid fuel fire heating device or solid fuel unit is considered outdoor if it is not located inside a one- or two-family dwelling unit, thereby making the solid fuel fire heating device or solid fuel unit subject to the Wisconsin Uniform Dwelling Code.

(7) Chronic Nuisance Premises.

(a) Purpose. The Common Council finds that from time to time certain premises in the City of Middleton, require a disproportionate amount of Police Department resources to be devoted to addressing various problems and incidents that occur thereon. Often this disproportionate devotion of police resources is due to property owners' own actions or the failure of property owners to accept and exercise sufficient responsibility for and over the actions of occupants, guests, agents or employees that reside upon or frequent the premises. Such premises, as further described in paragraph (b), below are deemed chronic nuisance premises and are public nuisances. This section is enacted to encourage property owners to recognize their responsibility to ensure that activities occurring on their property conform to the law and do not unduly burden the City's police resources and to provide a mechanism for the City to take action against property owners who fail to ensure premises they own do not require a disproportionate devotion of police resources and to recover the costs associated with the disproportionate devotion of police resources to such premises. This subsection is not intended to discourage crime victims or any person in legitimate need of police services from requesting them.

(b) Determination of Chronic Nuisance Premises.

1. Any premises to which the Police Department is called to respond to complaints of any nuisance activity, three (3) or more separate times within any thirty (30) day period is deemed to have received and require more than the general, acceptable level of police services, and places an undue burden upon the taxpayers of the City. For purposes of this subsection, a nuisance activity shall be offenses under Chapter 16 of this Code or their statutory counterparts, or any offense under state law for which a penalty of forfeiture, fine or imprisonment is provided. An offense shall not be considered a nuisance activity if it is committed by a person having no association with the premises by acquaintance with, relation to or expressed or implied invitation from the owner, occupant, operator or agent of the premises.

2. Whenever any such premises exists, the Chief of Police shall determine from the facts of each incident and considering the purpose of this subsection as set forth in paragraph (a) above, whether the premises is a chronic nuisance premises. A chronic nuisance premises is a public nuisance.

(c) Notice. Whenever the Chief of Police finds a premises constitutes a chronic nuisance premises under paragraph (b), the Chief of Police shall provide written notice of his determination to the owner the premises as identified by the records of the City Assessor that the premises. Such notice shall be delivered by registered mail, return receipt

requested or by personal service. If the owner cannot be located, the notice shall be published as a Class 2 notice under Wis. Chap. 985. The notice shall contain the following additional information:

1. The street address, parcel number or legal description sufficient to identify the premises.
2. A brief statement, including a description of the relevant activities, supporting the determination that the premise is a chronic nuisance premises.
3. A statement that the owner shall, within 10 days of receipt of the notice, or last day of publication if published, respond to the Chief of Police requesting a hearing before the Common Council or proposing in writing a course of action that will be taken to abate the nuisance activities.
4. A statement that the owner shall immediately notify the Chief of Police of any change in address to ensure receipt of future notices.

(d) **Owner Abatement.** If the owner responds to the notice in paragraph (c) with a nuisance abatement proposal, the Chief of Police may accept, reject or work with the owner to modify the proposal in his or her discretion. If the Chief of Police rejects the abatement proposal, determines that an agreement on an appropriate abatement proposal cannot be reached or determines that owner abatement is for any reason unsuccessful, the matter shall be referred to the Common Council for hearing.

(e) **Hearing.** If a hearing is requested or if the Chief of Police determines that a satisfactory abatement plan cannot be agreed upon or if the Chief of Police determines that abatement actions taken by the owner are unsuccessful, a hearing shall be held before the Common Council. The owner shall receive ten 10 days written notice of the hearing sent by regular mail or, if the owner cannot be located, by publication of a Class 2 notice under Wis. Stats. Chap. 985. The Common Council shall hear any and all evidence it deems relevant and shall affirm or reverse the determination of the Chief of Police.

(f) **Penalties and Remedies.**

1. If the Chief of Police's determination is affirmed, the Common Council may order the owner to pay the actual cost of any police call for any nuisance activities occurring after the three (3) police responses that lead to the determination that the premises was a chronic nuisance premises. Such costs shall be presented to the Common Council and may include cost incurred prior to the Common Council's determination. The Common Council may order costs of all such police calls to the chronic nuisance premises be paid until the public nuisance is abated under paragraph (g). Such costs shall be billed to the owner by invoice sent by regular mail and if not paid within thirty (30) days of the date on the invoice shall be charged to the property as a special charge pursuant to Wis. Stats. §66.0627.

2. Forfeitures under Section 17.08 may be imposed for each police call for any nuisance activities occurring after the three (3) police responses that lead to the determination that the premises was a chronic nuisance premises, however, no forfeiture shall be imposed for any nuisance activity that occurred prior to the Common Council affirming the decision of the Chief of Police.

3. The Common Council may authorize any other penalty or remedy authorized by law.

(g) **When Nuisance Is Deemed Abated.** The public nuisance created by a chronic nuisance premises shall be deemed abated when no police calls to the premises to address nuisance activities occurs for a period of six (6) consecutive months.

17.05 ABATEMENT OF PUBLIC NUISANCES.

(1) Inspection of Premises. Whenever a complaint is made to any City official or employee that a public nuisance exists within the City, said complaint shall be directed to the Chief of Police or the Building Inspector who shall in his or her reasonable discretion inspect or cause to be inspected the premises complained of and shall make a written report of his or her findings to the City Administrator. Whenever practicable, the inspecting officer shall cause photographs to be made of the premises.

(2) Summary Abatement.

(a) **Notice to Owner.** If the inspecting officer shall determine that a public nuisance exists within the City the Chief of Police or the Building Inspector may serve notice on the persons causing, permitting or maintaining such nuisance or upon the owner or occupant of the premises where such nuisance is caused, permitted or maintained and to post a copy of said notice on the premises. Such notice shall direct the person causing, permitting or maintaining such nuisance or the owner or occupant of the premises to abate or remove such nuisance within a specified, reasonable period of time after consideration of all relevant circumstances and shall state that unless the same is done will cause the nuisance to be abated and will charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be and that said costs may be collected as a special charge pursuant to Wis. Stats. §66.0627.

(b) **Abatement by the City.** If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the Chief of Police or Building Inspector shall cause the abatement or removal of such public nuisance. Wherever possible, costs of abatement shall be billed to the owner, occupant or person causing the nuisance. If said costs are not paid within thirty (30) days of billing such costs, or if the owner, occupant or person causing the nuisance cannot be found, said costs may be collected pursuant to Wis. Stats. §66.0627.

(3) Other Methods Not Excluded. Nothing in this section 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 including, but not limited to an action under Wis. Stats. Chap. 823.

17.06 COST OF ABATEMENT.

In addition to any other penalty imposed by this Chapter for the erection, contrivance, continuance or maintenance of a public nuisance, the cost of abating 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.

17.07 HAZARDOUS MATERIAL INCIDENT RESPONSE REIMBURSEMENT.

(1) Prohibited Discharges. No person, firm or corporation shall discharge or cause to be discharged, leaked, or spilled upon any public or private street, alley, public or private property, or into the ground, surface waters, subsurface waters, or aquifers, or within the City, except those areas specifically licensed for waste disposal or landfill activities and to receive such materials, any explosive, flammable or combustible solid, liquid or gas, any radioactive material at or above Nuclear Regulatory Restriction levels, etiologic agents, or any solid, liquid or gas creating a hazard, potential hazard, or public nuisance or any solid, liquid or gas having a deleterious effect on the environment.

(2) Containment, Cleanup, and Restoration. Any person, firm, or corporation in violation of the above section shall, upon direction of any Emergency Government Officer, begin immediate actions to contain, cleanup, and remove to an approved repository the offending material or materials and restore the site to its original condition, with the offending person, firm, or corporation being responsible for all expenses incurred. Should any person, firm or corporation fail to engage the necessary personnel and equipment to comply or complete the requirements of this section, the Office of Emergency Government may order the required actions to be taken by public or private resources and allow the recovery of any and all costs incurred by the City as action imposed by subsection (3).

(3) Emergency Services Response. Emergency Services Response includes, but is not limited to: Fire Service, Emergency Medical Service, and Law Enforcement. A person, firm or corporation who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall be responsible for reimbursement to the responding agencies for actual and necessary expenses incurred in carrying out their duties under this section. Actual and necessary expenses may include but not be limited to: replacement of equipment damaged by the hazardous material, cleaning, decontamination and maintenance of the equipment specific to the incident, costs incurred in procurement and use of specialized equipment specific to the incident, specific laboratory expenses incurred in the recognition and identification of hazardous substances in the evaluation of response, decontamination, clean up and medical surveillance, and incurred costs in future medical surveillance of response personnel as required by the responding agencies' medical advisor.

(4) Site Access. Access to any site, public or private, where a prohibited discharge is indicated or suspected will be provided to Emergency Government officers and staff and to

Middleton Police and Fire personnel for the purpose of evaluating the threat to the public and monitoring containment, cleanup and restoration activities.

(5) Public Protection. Should any prohibited discharge occur that threatens the life, safety or health of the public at, near, or around the site of a prohibited discharge, and that the situation is so critical that immediate steps must be taken to protect life and limb, the Coordinator of Emergency Government, his or her assistant, or the senior Police or Fire official on the scene at the emergency may order an evacuation of the area or take other appropriate steps for a period of time until the Middleton Common Council can take appropriate action.

(6) Enforcement. The Coordinator of Emergency Government and his or her deputies, as well as the senior Police officers, shall have authority to issue citations or complaints under this section.

(7) Civil Liability. Any person, firm, or corporation in violation of this section shall be liable to the City for any expenses incurred by the City or loss or damage by the City by reason of such violation.

(8) Penalties. Any person, firm or corporation in violation of this section shall forfeit to the City upon conviction thereof not to exceed two hundred dollars (\$200.00) plus the costs of prosecution. Each day of violation shall constitute a separate offense.

17.08 PENALTY.

Any person who violations any provision of this Chapter shall be subject to a penalty as provided in s. 30.04 of this Code. A separate offense shall be deemed committed on each day on which a violation of any provision of this Chapter occurs or continues.