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6.01 FLUORIDATION OF CITY WATER. The Public Works Director is authorized and directed to provide the means to introduce approximately one part of fluorine to every million parts of water distributed in the water supply system of the City of Middleton.

6.02 COMPULSORY CONNECTION TO CITY SEWER AND WATER. (1) When Required. Whenever a sewer or water main becomes available to a building used for human habitation, the Committee shall notify, in writing, the owner or his or her agent to connect the building thereto and to install such facilities as may be reasonably necessary to accomplish such connection. The manner of connection shall be prescribed by the Public Works Committee and shall be set forth in the notice given by the Public Works Director.

(2) Contents of Notice. The notice required by this section shall be given in the manner prescribed by Wis. Stat. s. 262.08, or by registered mail addressed to the last known address of the owner or his or her agent.

(3) Public Works Director May Cause Connection At Expense of Owner. If the owner or his or her agent fails to comply after thirty (30) days notice as herein provided, the Public Works Director may cause the connection or connections to be made and the expense thereof assessed as a special assessment tax against the property.

(4) Installment Option. The owner, or his or her agent, may within thirty (30) days after the completion of the work file a written option with the City Clerk stating that he or she cannot pay the cost of connection in one sum and that he or she elects that such sum be levied in five (5) equal annual installments, with interest on the unpaid balance as prescribed by City policy.

(5) Privies, Cesspools, Etc. Prohibited After Connection with Sewer. After connection of any building used for human habitation to a sewer main, no privy, cesspool or waterless toilet shall be used in connection with or upon the premises of such human habitation.

(6) Penalty. Whoever shall violate any lawful order issued by the Public Works Director shall be subject to a penalty as prescribed by section 30.04 of this Code. Each day of violation shall constitute a separate offense; provided, however, that no forfeiture or imprisonment shall be imposed where the connection is made and the expense thereof is charged as a special assessment against the property.

6.03 ABANDONMENT OF PRIVATE WELLS. (1) Purpose. a. To protect the usable groundwater by eliminating sources of contaminated surface waters or

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other materials.

b. To provide for public safety.

(2) **Application.** All unused and/or improperly constructed private wells shall be properly filled and sealed as required by the Wisconsin Administrative Code, NR 112. Owners shall have sixty (60) days to comply with abandonment notices issued by the City Engineer. Only those wells for which a well operation permit has been granted by the City Engineer may be exempted from this requirement; subject to conditions of maintenance and operation.

(3) **Well Operation Permits.** A permit may be granted to a well owner to operate a well for a period not to exceed three (3) years if the following requirements are met (application shall be made on forms provided by the City Engineer):

a. The well and pump installation meet the requirements of Chapter NR 112, Wisconsin Administrative Code.

b. The well has a history of producing safe water and presently produces bacteriologically safe water as evidenced by samples processed by a certified laboratory.

c. The proposed use of the well can be justified as being necessary in addition to water provided by the public water system.

d. No physical connection shall exist between the piping of the public water system and the private well.

e. A fee of \$60.00 will be charged at the time of application.

(4) **Method.** Wells to be abandoned shall be filled according to the procedures outlined in Chapter NR 112, Wisconsin Administrative Code. The pump and piping must be removed and the well checked for obstructions prior to plugging. Any obstruction or liner must be removed.

(5) **Reports and Inspections.** A well abandonment report must be submitted by the well owner to the Department of Natural Resources and the City on forms provided by that agency (available at the office of the City Engineer). The report shall be submitted immediately upon completion of the filling of the well. The filling must be observed by a representative of the City.

(6) **Penalties.** Any person, firm, or other well owner violating any provision of this ordinance shall upon conviction be punished by a forfeiture of not less than \$50.00 nor more than \$100.00 for each offense. Each 24 hour period during

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which a violation exists shall be deemed and constitute a separate offense.

6.04 COLLECTION AND DISPOSAL OF SOLID WASTE. (1) Purpose. The City finds participation in an integrated waste reduction and mandatory recycling program appropriate in this jurisdiction to conserve available, local landfill capacity. The City further finds it appropriate to participate in both county-wide and state-wide recycling programs to conserve energy, recycle valuable resources, and to protect the public health, welfare and the environment.

(2) Definitions. The following words are defined in this ordinance as follows:

a. "Collector/Hauler" means the contractor or entity chosen by the City to handle, transport, and dispose of the community's solid waste, recyclables, and non-recyclables, or, person or persons contracting with waste generators for these services, who will enforce preparation standards for recyclable materials as well as ensure community compliance with this recycling ordinance.

b. "Cardboard" means heavy-duty kraft paper packaging material with a corrugated medium between two flat paper lines. Commonly called "corrugated cardboard". The word excludes cereal or laundry detergent boxes, holders for multi-container packs of beverage cans or bottles and other similar packaging.

c. "Construction and Demolition Waste" means bricks, concrete, plasterboard, sheetrock, wood, plywood, windows and other building material remaining after construction, demolition or remodeling of a structure or landscape.

d. "Garbage" means discarded food and food waste materials resulting from the handling, processing, storage and consumption of food.

e. "Glass Containers" means glass bottles, jugs and jars, but excludes window glass, drinking glasses, pyrex and light bulbs.

f. "Lead-Acid Batteries" means automotive and similar type batteries that are comprised of lead plates with an acid electrolyte.

g. "Major appliances" means a residential or commercial air conditioner, clothes dryer, clothes washer, dishwasher, microwave oven, oven, refrigerator, freezer, stove, water heater, residential and commercial furnaces, boilers, dehumidifiers or any other item commonly referred to as "white goods".

h. "Metal Cans" means tin-coated steel cans, bi-metal cans, and aluminum cans used for food and other non-hazardous materials but excluding aerosol cans and cans that held paint, paint related products, pesticides or other toxic or

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hazardous substances.

i. "Multi-family Dwelling" means a residential dwelling place intended to be the residence of five or more independent family units.

j. "Newspapers" means matter printed on newsprint including advertising inserts.

k. "Non-Recyclables" means all items of refuse defined as nonrecyclable by this ordinance.

l. "Non-Woody" vegetation means herbaceous soft and succulent plants. It includes annuals, biennials and perennials. It excludes shrubs, woody vines and trees.

m. "Other paper" means all paper other than newspaper and cereal, beverage, and detergent boxes.

n. "Person" includes any individual, corporation, organization, association, including condominium owner associations as identified by Wis. Stat. s. 703.15(1), local governmental unit (as defined in Wis. Stat. s. 66.299(1)), state agency or authority or federal agency.

o. "Plastic Container" means a blow molded plastic bottle made of high density polyethylene (HDPE) or a plastic bottle or jar made of polyethylene terephthalate (PET). The term excludes HDPE containers that are not blow molded, such as containers for yogurt, cottage cheese, butter, margarine, ice cream and similar products. This term also excludes any plastic container marked with a recycling Code 3 through Code 7.

p. "Preparation Standards" means criteria that establish acceptable limits for introduction of materials into the recycling program.

q. "Recyclables" means identified refuse material meeting preparation standards and having markets and short term storage available. The term includes: newspapers; cardboard; unbroken brown, green and clear container glass; aluminum; bi-metal and tin-coated steel cans; blow molded HDPE and PET plastic containers; automotive tires; used oil; lead acid batteries; and major appliances. Other items as determined by the City from time to time to have markets available may be designated as recyclables.

r. "Refuse" means any recyclable and non-recyclable material as defined in this ordinance.

s. "Single-family Dwelling" means a residential dwelling place intended to

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be the residence of four or less independent family units. It includes individual homes, duplexes, triplexes, fourplexes and condominiums.

t. "Solid Waste" means garbage, refuse, yard waste, major appliances, construction and demolition debris, and hazardous waste.

u. "Solid Waste Storage" means safe, environmentally sound short term containment of materials and for recyclables shall involve preserving materials in a condition meeting preparation standards.

v. "Tire" means for the purpose of this ordinance rubber tires the inside diameter of which is less than sixteen (16) inches and is removed from the rim.

w. "Waste Oil" means any automotive type of lubrication oil; it excludes all other petroleum type or based products.

x. "Yard Waste" means the following:

1. Compostable materials, which include leaves, grass clippings and non-woody vegetation (garden waste).

2. Brush, which includes woody vegetation smaller than six (6) inches in diameter.

3. Other yard waste includes stumps, trees, brush larger than six (6) inches in diameter, roots and shrubs with intact root balls.

(3) Applicability. This code section shall apply to all persons, entities and waste generating activities within the corporate limits of the City.

(4) Conflict and Severability. The provisions of this Code section are the minimum requirements and shall not be deemed a limitation or repeal of any other power granted by Wisconsin Statutes or pertinent Dane County Ordinance in their interpretation and application. In case any provision or provisions of this Code section is determined by any court of law to be unconstitutional, illegal, or unenforceable, all other provisions of this section shall remain in full force and effect.

(5) Mandatory Separation and Collection. a. All owners and occupants of residential, commercial, industrial, municipal and school entities, located within the City, shall be required to separate recyclable materials, as defined herein, from all other solid waste, and shall be additionally required to make arrangements, as indicated herein, for the collection and disposal of the same.

b. Single family and multi-family dwellings utilizing City provided disposal

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shall prepare and place for pick up all solid waste as provided for in this section.

c. Single family, multi-family, and all commercial, industrial, municipal, and school entities not utilizing City provided disposal shall provide through private collector/haulers for compliance with the requirements of this section.

d. All recyclables and other solid waste materials that are designated by residents for collection by the City or its authorized collector will be placed in City approved containers at curb side or at other City designated collection points no later than 6:00 AM on the day of collection.

e. Only solid waste generated on premises may be placed out for collection.

f. No person shall deposit any brush, newsprint, yard waste, solid waste, waste tires, major appliances, construction and demolition debris or other refuse or garbage of any kind whatsoever on a lawn, terrace or in a dumpster or other refuse container located in or upon commercial or residential property without the permission of the owner or lessee of said property.

(6) **Notification Required.** a. Owners of single family and condominium rental units, duplexes, triplexes, fourplexes and multi-family dwelling units shall notify all tenants upon move-in, and in addition on a semi-annual basis thereafter, of the City, County, and State recycling requirements.

b. Owners or occupants of commercial, retail, industrial and governmental facilities shall notify all users, including employees, agents and customers, through highly visible advertising on the premises of the City, County, and State recycling requirements.

(7) **Preparation of Recyclables.** Acceptable recyclable materials shall be prepared in accordance with the following minimum standards:

a. Newspaper and Inserts shall be dry and bundled not more than eight (8) inches high and tied with string or twine. They shall not be placed in bags or boxes and shall not include cardboard, paperboard, bags, magazines or junk mail.

b. Cardboard shall be flattened, empty and free of food debris and other contaminating material. Cardboard shall not be larger than 3 feet by 3 feet. Larger pieces shall be cut. Large quantities of cardboard shall be bundled and tied with string or twine.

c. Metal Cans shall be rinsed and have the labels removed.

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d. Glass Containers shall be rinsed, unbroken, and be free of metal caps and rings, and not compacted with newspaper or garbage.

e. Plastic Containers shall be rinsed, and have caps and rings removed.

f. Lead Acid Batteries shall be unbroken with all caps on.

g. Waste Oil shall be placed in sealed or capped plastic containers not larger than one gallon. Waste oil shall not be mixed or contaminated with other fluids.

h. (1) Tires shall not have an inside diameter larger than sixteen (16) inches and shall be removed from rims.

(2) The collection fee for removal of tires shall be equal to the actual cost charged to the City for tire collection by its recycling contractor.

(8) Collection of Major Appliances. a. Major Appliances will be collected under policies established by the Public Works Department.

b. The collection fee for residential or commercial air conditioners, clothes dryers, clothes washers, dishwashers, ovens, refrigerators, freezers, stoves, water heaters, residential and commercial furnaces, boilers, humidifiers, trash compactors and microwave ovens shall be equal to the actual cost charges to the City for collection of these items by its recycling contractor.

(9) Collection of Yard Waste. a. Leaves, garden waste and brush will be collected under policies established by the Public Works Department.

b. Grass clippings and other yard waste will not be placed out for collection. Collection and disposal will be the owner's responsibility.

(10) Collection of Construction and Demolition Waste. a. The City or its authorized collector/hauler will only pick up quantities less than or equal to one (1) thirty two (32) gallon container with a weight of less than fifty (50) pounds per collection.

b. Larger quantities may not be placed out for collection. Collection and disposal will be the owner's responsibility.

(11) Collection of Non-Recyclables. a. All non-recyclable material and garbage placed out for collection shall be deposited in watertight containers or

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clear or translucent watertight bags. No container or bag placed for collection shall exceed 30 gallons in capacity or 50 pounds in weight unless dumpsters are provided at owner's expense for collection.

b. Containers placed out for collection shall not be placed at the curb side or other designated collection area more than twelve (12) hours prior to the scheduled collection day and must be removed within twelve (12) hours after collection.

(12) Prohibited Practices. No person shall:

a. Deposit or cause to be deposited and recyclable material in any container used for the collection of non-recyclable material.

b. Deposit or cause to be deposited any non-recyclable material in any container used for the collection of recyclable material.

(13) Anti-Scavaging Provision. a. Persons shall neither pilfer nor disturb recyclables once those materials are placed for collection.

b. All recyclable materials placed for collection pursuant to this ordinance shall become, upon placement, the property of the City or its authorized collector or the private hauler/collector with whom persons in the City have contracted to perform solid waste and recyclable collection.

c. Only persons authorized by the City, its authorized collector, or the private collector/hauler with whom persons in the City have contracted to perform solid waste and recyclable collection, or the waste generator him/her self may collect or handle recyclable materials once those materials have been placed for collection.

d. Any and each collection by unauthorized persons in violation of this provision shall constitute a separate and distinct offense punishable as provided hereafter.

(14) Violations. a. Any person who violates any provision of this section or any regulations promulgated pursuant to this section shall forfeit upon conviction thereof not less than \$25.00 nor more than \$500.00 for each separate offense and each day or part thereof during which a violation occurs or continues to occur shall be deemed a separate offense. All forfeitures shall be double the amount listed if the violation involves hazardous waste as defined by the Wisconsin Department of Natural Resources pursuant to the authority granted under Wis. Stats. Chap. 291.

b. Graduated enforcement will be used as follows:

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1. First violation- a tag will be left explaining the violation and the solid waste will be collected.

2. Second violation- a tag will be left explaining the violation and the solid waste will be collected. A warning letter will be sent to the offender.

3. Third violation- a citation will be issued.

c. Graduated enforcement may be waived for gross or intentional violations. The amount of forfeiture will double for subsequent violations after the third violations.

(15) Consistency. All ordinances of the City or parts of those ordinances construed to be inconsistent with this section for the purpose of achieving an effective solid waste management program in the City are hereby superseded as to such inconsistency only for the limited purpose of making effective all provisions in this section.

6.05 STORAGE AND ACCUMULATION OF JUNK. No person, firm or corporation shall store or accumulate on vacant lots or lands within the City any automobile or boat not in running or operating condition, junk, salvage, building materials, old machinery or fencing materials unless such lots or lands are zoned to permit such accumulation or with the written permission of the Public Works Director. Whoever shall violate any of the provisions of this section shall be subject to a penalty as provided by section 30.04 of this Code. Each violation shall constitute a separate offense, and additionally each day of continuing violation shall constitute a separate offense.

6.06 DEPOSIT OF GARBAGE AND REFUSE CREATING A STENCH OR NUISANCE. No person, firm, or corporation shall place or deposit on any sidewalk, gutter, street or alley, or upon any public or private grounds in the City or in any creek, pond, or other body of water in the City any garbage, dead animal offal, decayed meat, refuse, filth or any other substance that contaminates or tends to contaminate the waters, or that will cause destruction of any sidewalk, gutters, street or alley, or that will in any manner create any offensive or noisome stench or nuisance, or that will endanger or tend to endanger the public health; and the Public Works Director is empowered to summarily remove or cause to be removed any such garbage, dead animal offal, decayed meat, refuse, filth or other substance so placed or deposited contrary to the provisions of this section. Whoever shall violate any provision of this section shall be subject to a penalty as provided in section 30.04 of this Code. Each violation, and each day of continuing violation, shall constitute a separate offense.

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6.07 REQUIRED VACCINATION OF DOGS AND CATS AND IMPOUNDMENT OF ANIMALS SUSPECTED OF BEING RABID. (1) Vaccination Required. Every dog or cat owner residing in the City shall have each dog or cat owned by him or her inoculated with an avianized anti-rabid vaccine by a veterinarian before the date that the immunization expires as stated on the certificate of vaccination or, if no date is specified, within three (3) years after the previous vaccination.

(2) **City Clerk Shall Provide Certificates and Tags.** The County Clerk shall provide certificates of vaccination in triplicate form, for distribution to licensed veterinarians located within Dane County, Wisconsin. The certificates shall contain provisions for inserting information including: name and address of the dog or cat owner, date of vaccination, number of tag, breed, age, color and sex of the dog or cat, and such other information as may be required. The veterinarian shall be provided with a corresponding dog or cat tag of durable material to be attached to the collar or harness of the dog or cat as evidence of such inoculation and such tag shall be numbered and shall contain the year of issuance.

(3) **Certificates.** Each veterinarian, after inoculating a dog or cat, shall insert in a certificate the information required thereby and shall present one copy to the dog or cat owner and retain the remaining copy. The veterinarian shall also give the corresponding dog or cat tag to the dog or cat owner, which must be attached to the collar or harness of the dog and cat and must be worn by the dog or cat at all times.

(4) **Dog or Cat Tags Required to be Worn.** It shall be unlawful to own, harbor or keep any dog or cat over six (6) months of age which does not carry the

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dog or cat tag required by this section.

(5) Dogs or Cats Without Tags to be Impounded. Any police officer of the City may impound or cause to be impounded any dog or cat which does not carry the dog or cat tag as herein provided. The possession of any dog or cat so impounded or seized may be obtained by payment of a fee of \$10.00 and any fees for the board of the dog or cat during the time it is impounded; provided, however that the impounded dog or cat shall not be released until proof has been furnished to the police officer that the dog or cat has been inoculated with anti-rabic vaccine in accordance with the terms of this section. After a dog or cat has been so impounded for a period of seven (7) days without it having been reclaimed by its owner or anyone on behalf of its owner, the dog or cat shall be turned over to the Dane County Humane Society. Notice of impounding shall be given by the officer as soon as possible after impounding to the owner of the dog or cat, if known.

(6) Impounding of Cats or Dogs and All Other Warm Blooded Animals for Protection Against Rabies. (a) Any person owning, harboring, or keeping any dog or cat or any other warm blooded animal which has bitten any person, or is suspected of having rabies, shall immediately deliver and surrender said dog or cat or any other warm blooded animal to a Wisconsin licensed veterinarian and shall notify the Dane County Human Society Officer or any law enforcement officer, of the reasons which lead him or her to surrender the animal to the veterinarian.

(b) Any person who has knowledge that any animal has rabies or has bitten a person shall immediately notify the owner, harbinger, or keeper of such animal, if known, of the facts which formed the belief that the animal has rabies or of the identity of the person bitten, and the place, time and circumstances surrounding the biting and shall immediately notify the Human Society Officer or a local enforcement officer of the description of the animal involved, the owner, harbinger, or keeper, if known, the facts which formed the belief that the animal has rabies, or the identity of the person bitten and the place, time and circumstances surrounding the biting.

(c) A Police Officer who orders an animal impounded shall deliver the animal or shall order the animal delivered to a veterinary hospital in the County of Dane as soon as possible but no later than twenty-four (24) hours after the original order is issued.

(d) Alternatively, the officer may order the animal to be impounded on the premises of the owner upon the determination that the animal is currently immunized against rabies vaccination or other evidence. If an animal is ordered to be home impounded, the owner shall keep the animal under strict isolation under the supervision of a veterinarian for at least ten (10) days. The

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impoundment shall be at the animal owner's expense. Supervision of a veterinarian includes examination of the animal on the first day of impoundment, on the fourth, fifth or sixth day of impoundment and on the last day of impoundment.

(e) In cases of home impoundment, "strict isolation" shall be defined by the police department with additional special conditions as necessary in order to protect the public health, safety and welfare.

(7) **Seizure Duties.** It is the duty of the Dane County Humane Society officer or any law enforcement officer to seize any dog, cat, or other warm blooded animal which has bitten a person or which has contacted rabies, and deliver the same to any Wisconsin licensed veterinarian for a ten day observation period if:

(a) The dog, cat, or other warm blooded animal is not being owned, harbored, or kept by any person.

(b) The person owning, harboring or keeping the animal does not act as required in s. 6.07(6).

(8) **Duties of the Veterinarian.** Upon delivery of any such dog, cat, or other warm blooded animal to a veterinarian, the veterinarian shall:

(a) Impound the animal for ten (10) days observation.

(b) Examine the animal for rabies.

(c) Destroy the animal in a humane manner if the animal is infected with rabies.

(d) Determine whether it shall be necessary to have the animal's body taken to a laboratory facility for testing.

(e) Return the animal to the person owning, harboring, or keeping the animal, if the animal is not infected with rabies.

(f) Be entitled to a reasonable fee in the amount normally charged for boarding animals, and an additional reasonable fee for the destruction and disposal of the animal if the animal must be destroyed and disposed of. Such fees shall be paid by the person owning, harboring or keeping the animal. In the event the owner is not known, such fees shall be paid by the City.

(g) Send a written report of the findings to the Dane County Humane Society Officer, and the person owning, harboring, or keeping the animal or the

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officer who seized the animal.

(g) Turn over to the Dane County Humane Society any animal not claimed within five (5) days after submitting the written report.

(9) Report When Animal is Destroyed or Impounded. Any person, police officer or health officer who destroys or impounds any animal shall make a report to the Chief of Police stating when and under what conditions the seizure or impoundment of the animal occurred and the owner's name, if known.

(10) Penalty. Whoever violates any of the provisions of this section is subject to a penalty as provided in s. 30.04 of this Code.

6.08 DEFECATION OF ANIMALS ON PUBLIC PROPERTY. (1) No person owning or having control of any animal shall suffer or permit such animal to defecate upon any public sidewalk, terrace, street, park or other public way without immediately causing such defecation to be removed therefrom by burial or flushing in a toilet.

(2) Any person who violates any provision of this section is subject to a penalty as provided in s. 30.04 of this Code.

6.09 SMOKING PROHIBITED

(1) Purpose. The Common Council finds that smoking tobacco products is hazardous to the health of both smokers and nonsmokers who are exposed to smoking. Reliable scientific studies, including studies conducted by the Surgeon General of the United States, have shown that breathing side-stream or secondhand smoke is a significant health hazard to nonsmokers, particularly to children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Health hazards induced by breathing side-stream or secondhand smoke include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction, and bronchospasm. This Section is adopted for the purpose of protecting the public health, general welfare, safety and comfort of the people of the City of Middleton.

(2) Definitions. In this section:

(a) "Employee" means any person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go or work or be at any time in any place of employment.

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- (b) **“Employer” means any person, business, partnership, association, trust, firm, corporation, state, county, town, city, village, school district, sewer district, drainage district, family care district, non-profit entity, and other public or quasi-public corporations as well as any agent, manager, representative or other person having control or custody of any employment, place of employment or of any employee.**
- (c) **“Employment” means any trade, occupation or process of manufacture, or any method of carrying on such trade, occupation or process of manufacture in which any person may be engaged.**
- (d) **“Place of employment” means any area under the control of an employer that employees may be expected to be present during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence shall not be considered a place of employment unless it is used as a child care, adult day care or health care facility.**
- (e) **“Primary entrance” means the entrance to any public building intended to be commonly and predominately used by members of the public for initial access to a public building from a parking lot, public street or sidewalk. A building may have more than one primary entrance.**
- (f) **“Public building” means the interior area of any structure used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy or use by the public, or as a place of employment and includes lobbies, hallways and other common areas in any apartment building, condominium, retirement facility, nursing home or other multiple-unit residential facility. Notwithstanding the general application of this definition to interior areas of structures, outdoor seating structures such as stadiums, bleachers or outdoor auditoriums for spectators of sports events, outdoor theater or other similar events shall also be considered a public building. A private residence is not a public place unless it is used as a child care, adult day care or health care facility.**
- (g) **“Secondary entrance” means any entrance such as emergency exits, service entrances, entrances for employees only or entrances from outdoor public seating areas not serving as a primary entrance.**
- (h) **“Service line” means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind,**

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whether or not the service involves the exchange of money, including but not limited to ATM lines, concert lines, food vendor lines, movie ticket lines and sporting event lines or waiting for public transportation. The term “service line” does not include lines in which people wait in their vehicle such as a drive-through or car wash line.

- (i) “Smoking” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.
- (3) **Prohibition of Smoking in Public Buildings.** No person shall smoke in any public building or within fifteen (15) feet of any primary entrance, operable window, or ventilation system of a public building, in any vehicle that constitutes a place of employment or within fifteen (15) feet of any service line or within three (3) feet of a secondary entrance. Nothing in this Section shall be interpreted as a limitation on the right of a property owner to prohibit smoking in any area where smoking is not prohibited by this Section.
- (4) **Exceptions.** The prohibition in subsection (3) shall not apply to:
- (a) Any hotel or motel rooms rented to a guest. This exception applies only to rooms with sleeping quarters, not to conference rooms or other facilities available for rent. For this exception to apply, all rooms where smoking is to be permitted by the owner or operator shall be contiguous to one another and smoke shall not infiltrate into areas where smoking is prohibited by this Section.
 - (b) Retail tobacco stores operating as the sole business in the building in which it is located and which derives ninety percent (90%) or more of its gross receipts from the sale of tobacco or smoking paraphernalia such as pipes, matches, lighters, cigarette papers, humidors, cigarette cases or ashtrays.
- (5) **Posting of Signs.** Every public building shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. Every vehicle that constitutes a place of employment shall post a conspicuous sign likely to be seen by any occupant clearly stating that smoking is prohibited. Use of the international “No Smoking” symbol, a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across the cigarette, shall be construed as a clear statement that smoking is prohibited. The posting of signs is an affirmative duty upon the owner or operator of a public building, but failure of the owner or operator of a public building to post signs shall not be a defense to prosecution of a

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violation of this ordinance.

- (6) **Ashtrays.** No ashtrays shall be present in any indoor area where smoking is prohibited by this Section except for ashtrays displayed for sale and not available for use on the premises.
- (7) **Retaliation; Waiver of Rights.**
- (a) No person or employer shall discharge, refuse to hire, refuse service to or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant or customer exercises any rights afforded by this Section, makes a complaint regarding any violation of this Section, or reports a violation of this Section to the City.
- (b) An employee who works in a setting where an employer allows smoking contrary to this Section does not waive or otherwise surrender any rights the employee may have against the employer or any other party.
- (8) **Enforcement and Penalties.**
- (a) Any person found in violation of subsection (3) shall be subject to a forfeiture not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00).
- (b) Any owner, operator, or manager of a place where smoking is prohibited who observes a violation of this Section, shall immediately direct the person committing the violation to cease smoking and extinguish all smoking materials. If the person does not stop smoking, the owner, operator, or manager shall order the person to leave the premises. If the person fails to immediately leave the premises, the owner, operator, manager shall immediately call the City of Middleton Police Department. Any owner, operator, or manager or employee who fails to prevent violations of this ordinance as set forth in this paragraph or otherwise fails to comply with any provisions of this Section shall be subject to a forfeiture as follows:
1. Not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00) for the first violation within any twelve (12) month period.
 2. Not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00) for the second violation within any

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twelve (12) month period.

3. Not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for the third violation within any twelve (12) month period.

- (c) Each day a violation exists or occurs shall constitute a separate violation.
 - (d) Violation of this Section shall constitute grounds for the revocation or suspension of any license or permit issued under Chapter 7 of this Code of Ordinances related to the operation of the premises where smoking is prohibited.
 - (e) Violations of this Section shall be considered public nuisances and may be enjoined pursuant to Chapter 17 of this Code of Ordinances, Wis. Stats. Chap. 823 or by any other means authorized by law.
- (9) **Severability.** If any portion, clause, sentence, or paragraph of this Section or the application thereof to any person, entity, or circumstances is held invalid, that invalidity shall not affect the other provisions of the Section which can be given effect without the invalid provision or application and to this end the provisions of this Section are declared to be severable.

This Ordinance shall become effective March 15, 2009 or upon publication whichever is later.

During the first nine (9) months after adoption of this ordinance the City shall waive all building permit fees for any application by any existing restaurant or tavern to construct an outdoor seating area to accommodate customers who wish to smoke.