

CHAPTER 7

Public Nuisances

SEC. 11-7-1 PUBLIC NUISANCES PROHIBITED.

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

SEC. 11-7-2 PUBLIC NUISANCE DEFINED.

A public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as to substantially annoy, injure or endanger the comfort, health, repose or safety of the public. Violations of the following shall also be considered a public nuisance:

- (a) The exterior of every structure or accessory structure, residential and non-residential, including fences, shall be maintained in good repair and all surfaces thereof shall be kept painted where necessary for purposes of preservation and appearance. The same shall be maintained free of broken, loose shingles, crumbling stone or brick, excessive peeling paint or other conditions reflective of deterioration or inadequate maintenance.
- (b) Any junk, wood, bricks, cement, concrete blocks, abandoned vehicles or machinery or parts thereof, refrigerators, furnaces, washing machines, stoves, or other unsightly debris, such as may tend to depreciate property values in the area or create a nuisance or hazard shall not be allowed on any property, except when such materials are properly housed and out of public view.
- (c) Any use of property, substances or things within the City of Menasha or within four (4) miles thereof emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, effluvia or stenches 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.
- (d) The failure of anyone who removes any flammable or combustible liquid storage tank without also removing any contaminated soil.
- (e) Substantially annoy, injure, or endanger the comfort, health, repose or safety of the public.
- (f) Render the public insecure in life or in the use of the property.
- (g) Offend the public morals or decency.
- (h) Unlawfully interfere with, or obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable water or other public way or use of public property.

SEC. 11-7-3 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 Section 11-7-2:

- (a) **ADULTERATED FOOD.** All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.
- (b) **UNBURIED CARCASSES.** Carcasses of animals, birds or fowl not intended for human consumption or foods which are not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death.
- (c) **BREEDING PLACES FOR VERMIN, ETC.** 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) **STAGNANT WATER.** All stagnant water in which mosquitoes, flies or other insects can

multiply.

- (e) **GARBAGE CANS.** Garbage cans which are not fly-tight.
- (f) **NOXIOUS WEEDS.** All noxious weeds and other rank growth of vegetation.
- (g) **WATER POLLUTION.** 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.
- (h) **STREET POLLUTION.** 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.
- (i) **ANIMALS AT LARGE.** All animals running at large.
- (j) **ACCUMULATIONS OF REFUSE.** Accumulations of old cans, lumber, elm firewood and other refuse.
- (k) **LITTER, TRASH, ETC.** Filthy, littered or trash covered cellars, house yards, factory yards, vacant areas in the rear of stores, vacant lots, houses, buildings or premises containing trash, litter, rags, accumulation or empty barrels, boxes, crates, packing cases, lumber or firewood not neatly piled, scrap iron, tin or other metal not neatly piled, or anything in which flies or rats may breed or multiply or which may be a fire danger.
- (l) **ANIMAL EXCRETA.** The owner or any person having immediate control of an animal shall promptly remove and dispose of, in a sanitary manner, any excreta left or deposited by the animal upon any public or private property.
- (m) **PREMISES IN VIOLATION OF BUILDING CODE.** All buildings erected, repaired or altered within the City in violation of the provisions of the ordinances of the City relating to materials and manner of construction of buildings and structures.
- (n) **UNAUTHORIZED STREET OBSTRUCTIONS OR 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 or which, although made in accordance with such ordinances are kept or maintained for an unreasonable length of time after the purpose thereof has been accomplished.
- (o) **UNGUARDED EXCAVATIONS, ETC.** All open and unguarded pits, wells, excavations or unused basements freely accessible from any public street, alley or sidewalk.
- (p) **DUST CONTROL.**
 - (1) Applicability. When applicable, this Subsection shall govern all lots except those zoned and used for one (1) and two (2) family dwellings.
 - (2) Specifics. Each person, partnership or corporation owning such a lot shall conduct his business in such a manner as to avoid unnecessary inconvenience and annoyance to the neighboring property owners. That person, partnership or corporation shall take all practical measures to reduce to the utter minimum dust pollution in the area. Said measures shall include, but not be limited to, blacktopping, seal coating, oiling, seeding or any other measures suggested by the Director of Public Works. The Director of Public Works is hereby ordered and directed to make the necessary recommendations to the offending property owner taking into consideration the type of activity permitted on the lot, amount of traffic and all other conditions associated with the business. Should the aggrieved property owner feel that such order, after being delivered in writing, is unfair or impractical, he may appeal the order of the Director of Public Works to the Board of Public Works. All orders of the Director of Public Works shall be in writing and delivered by certified mail. Property owners shall be given thirty (30) days in which to comply. An appeal from any order, however, must be made to the Board of Public Works within ten (10) days of the delivery of the certified letter.
 - (3) Duties of Owners. The owner of any lot shall at all times maintain the premises free of litter, provided, however, that this Section shall not prohibit the storage of litter in authorized private receptacles for collection.
 - (4) Notice to Offending Property Owner. The Health Officer is hereby authorized and

empowered to notify the owner by certified mail to properly dispose of litter located on such owner's property which is dangerous to the public health, safety or welfare.

- (q) **NOXIOUS FUMES.** The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the City limits or within one (1) mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property.
- (r) **NOXIOUS ODORS.** Any use of property, substances or things within the City or within four (4) miles thereof emitting or causing any foul, offensive, nauseous, noxious or disagreeable odors, effluvia or stenches 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.

SEC. 11-7-4 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 public peace or safety coming within the definition of Section 11-7-2:

- (a) **SIGNS, BILLBOARDS, ETC.** All signs and 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.
- (b) **ILLEGAL BUILDINGS.** All buildings erected, repaired or altered in violation of the provisions of the Ordinances of the City relating to materials and manner of construction of buildings and structures within the City.
- (c) **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 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) **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.
- (e) **TREE LIMBS.** All limbs of trees which project over a public sidewalk less than ten (10) feet above the surface thereof and all limbs which project over a public street less than fourteen (14) feet above the surface thereof.
- (f) **DANGEROUS TREES.** All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.
- (g) **FIREWORKS.** All use or display of fireworks except as provided by the laws of the State of Wisconsin and Ordinances of the City.
- (h) **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.
- (i) **WIRES OVER STREETS.** All wires over streets, alleys or public grounds which are strung less than fifteen (15) feet above the surface thereof.
- (j) **NOISY ANIMALS OR FOWL.** 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) **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 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, or which do not conform to the permit.

- (l) **OPEN EXCAVATIONS.** All open and unguarded pits, wells, excavations or unused basements accessible from any public street, alley or sidewalk.
- (m) **ABANDONED REFRIGERATORS.** 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) **FLAMMABLE LIQUIDS.** Repeated or continuous violations of the Ordinances of the City or laws of the State relating to the storage of flammable liquids.
- (o) **UNREMOVED SNOW.** All snow and ice not removed or sprinkled with ashes, sawdust, sand or other chemical removers, as provided in this Code.
- (p) **GRAFFITI.**
 - (1) Graffiti is described as any inscription, word, figure, or design marked, etched, scratched, drawn or painted with spray paint, liquid paint, ink, chalk, dye, or other similar substances on buildings, fences, structures, and other similar places without the express permission of the owner or operator of the property.
 - (2) Every owner or occupant of a structure or property defaced by graffiti shall notify the police department of the graffiti before removing or covering the graffiti.
 - (3) Every owner of a structure or property defaced by graffiti shall comply with the terms of a written order of the Director of Community Development or his/her designee served personally as specified in Sec. 801.10 and 801.11, Wisconsin Statutes.
 - (4) In the event any owner or occupant fails to comply with the order specified in sec. 11-7-4(p)(3), the City shall have the graffiti covered or removed and all costs, fees and expenses will be deemed a special charge pursuant to sec. 3-2-12 and placed on such owners' real estate taxes if not paid.
 - (5) Any owner or occupant served an order under sec. 11-7-4(p)(3) may petition the Common Council for relief of such order. Such petition must be in writing and filed not more than thirty days from the date of service. The Administration Committee shall hold a hearing on such petition and enter any appropriate order. The aggrieved party may be represented at such hearing. Testimony is not required to substantiate the existence of the graffiti. The issues shall be limited to the appropriateness of the order of the Director of Community Development.
 - (6) This ordinance shall not apply to hopscotch grids or such other generally accepted game configurations which are placed on parking lots, sidewalks, streets, or other similar areas in chalk or other washable substance.

SEC. 11-7-5 PUBLIC NUISANCES OFFENDING MORALS AND DECENCY.

The following acts, omissions, places, conditions and things are public nuisances offending public morals and decency, but such enumeration shall not exclude other nuisances offending public morals and decency defined elsewhere in the Menasha City Code:

- (a) **DISORDERLY HOUSES.** All disorderly houses, bawdy houses, houses of ill fame, gambling
 - a. sexual intercourse or gambling.
- (b) **GAMBLING HOUSES.** All gambling devices and slot machines.
- (c) **UNLICENSED SALES OF LIQUOR AND FERMENTED MALT BEVERAGES.** 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 City ordinances.
- (d) **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 openly, continuously, repeatedly and intentionally violated.

- (e) **ILLEGAL DRINKING.** Any place or premises resorted to for drinking intoxicating liquor or fermented malt beverage in violation of State law or City ordinance
- (f) **DRUG OR CRIMINAL GANG HOUSE.** Any building or structure that is used to facilitate the delivery, distribution, or manufacture, as defined in s. 961.01(6), (9), and (13) respectively, of a controlled substance, as defined in s. 961.01(4), or a controlled substance analog, as defined in s. 961.01(4m), and any building or structure where those acts take place, is a public nuisance and may be proceeded against under this section. Statutory reference Ch. 823, Wis. Stats.

SEC. 11-7-6 ABATEMENT OF PUBLIC NUISANCES.

- (a) **ENFORCEMENT.** The Chief of Police, Fire Chief, Building Inspector, Community Development Director, Public Health Director and Sanitarian shall enforce those provisions of this chapter that come within the jurisdiction of their offices. They shall make periodic 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 shall have inspected or caused to be inspected the premises where the nuisance is alleged to exist and have satisfied himself that a nuisance does in fact exist.
- (b) **SUMMARY ABATEMENT**
 - (1) Notice to Owner. If the inspecting officer shall determine that a public nuisance exists on private or public property and that there is great and immediate danger to the public health, safety or peace, morals or decency, the Mayor may direct the Chief of Police to serve notice on the person 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 such notice on the premises. Such notice shall direct the owner, occupant or person causing, permitting or maintaining such nuisance to abate or remove such nuisance within five (5) days after service and posting and shall state that unless such nuisance is so abated, the City will cause the same to be abated and will charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance.
 - (2) 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 officer having the duty of enforcement shall cause the abatement or removal of such public nuisance.
- (c) **ABATEMENT BY COURT ACTION.** If the inspecting officer shall determine that a public nuisance exists on private premises but that the nature of such nuisance does not threaten immediate danger to the public health, safety, peace, morals or decency, he shall file a written report of his findings with the Mayor, who, upon direction of the Council, shall cause an action to abate such nuisance to be commenced in the City's name in the Circuit Court in accordance with the provisions of Chapter 280, Wis. Stats. If a nuisance exists, the city may maintain an action in the circuit court to abate the nuisance and to perpetually enjoin every person guilty of creating or maintaining the nuisance, the owner, lessee, or tenant of the building or structure where the nuisance exists and the owner of the land upon which the building or structure is located, from continuing, maintaining, or permitting the nuisance.
- (d) **OTHER METHODS NOT EXCLUDED.** Nothing in this chapter shall prohibit the abatement of public nuisances by the City or its officials in accordance with State Law.

- (e) **COURT ORDER.** Except when necessary under sub. (2), no officer hereunder shall use force to obtain access to private property to abate a public nuisance but shall request permission to enter upon private property if such premises are occupied, and, if permission is denied, shall apply to any Court having jurisdiction for an order assisting the abatement of the public nuisance.
- (f) **JUDGMENT AND ORDER OF SALE OF PROPERTY**
If the existence of the nuisance is established in an action under s. 832.113, an order of abatement shall be entered as part of the judgment in the case. In the order, the court may do all the following:
- (1) Direct the removal from the building or structure of all furniture, equipment, and other personal property used in the nuisance.
 - (2) Order the sale of the personal property.
 - (3) Order the closure of the building or structure for any purpose.
 - (4) Order the closure of the building or structure until all building code violations are corrected and a new certificate of occupancy is issued if required by the City and the building or structure is released under s. 823.15 or sold under s. 823.115.
 - (5) Order the sale of the building or structure and the land upon which it is located or, if the requirements under s. 66.05(1)(b) are met, order that the building or structure be razed, the land sold, and the expense of razing collected under s. 823.06. Statutory reference s. 823.114 Wis. Stats.

SEC. 11-7-7 COST OF ABATEMENT.

In addition to any other penalty imposed by his chapter for the erection, contrivance, creation, 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 costs shall be assessed against the real estate as a special charge.

SEC. 11-7-8 CHRONIC NUISANCE PREMISES.

- (a) **DEFINITIONS.** The following terms shall be defined as follows in this subchapter.
1. Chief. The Chief of Police or his/her designee.
 2. Enforcement Action. Arrest, the issuance of a citation, the issuance of a written or verbal warning, or an order to abate a code violation.
 3. Nuisance Activity. Any of the following activities, behaviors, or conduct whenever engaged in by property owners, operators, tenants, occupants, or persons associated with premises:
 - (a) An act of harassment, as defined in 947.013, Wis. Stats.
 - (b) Disorderly conduct, as defined in 947.01, Wis. Stats.
 - (c) Crimes of violence, as defined in Chapter 940, Wis. Stats.
 - (d) Obstructing or resisting an officer, as defined in 946.41, Wis. Stats.
 - (e) Crimes against sexual morality, as defined in Chapter 944, Wis. Stats.
 - (f) Any gambling crimes, as defined in Chapter 945, Wis. Stats.
 - (g) Animal violations, as defined in Chapter 7, City of Menasha Municipal Code.
 - (h) Theft, as defined in 943.20, Wis. Stats.
 - (i) Receiving stolen property, as defined in 943.34, Wis. Stats.
 - (j) Damage to property, as defined in 943.01, Wis. Stats.
 - (k) Arson, as defined in 943.02, Wis. Stats.
 - (l) Possession, manufacture, or delivery of a controlled substance or related offenses, as defined in Ch. 961, Wis. Stats.

- (m) Trespassing, as defined in 943.13 and 943.14, Wis. Stats.
- (n) Weapons violations, as defined in Chapter 11, City of Menasha Municipal Code.
- (o) Noise violations, as defined in Chapter 11, City of Menasha Municipal Code.
- (p) Alcohol violations, as defined in Chapter 11, City of Menasha Municipal Code and 125.07, Wis. Stats.
- (q) Loitering and curfew violations, as defined in Chapter 11, City of Menasha Municipal Code.
- (r) Reckless driving, as defined in 346.62, Wis. Stats.
- (s) 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 subsections (1) (c) a. through r. above.
- (t) The execution of arrest or search warrants at a particular location.
- (u) City of Menasha inspection-related calls where the Police Department responds.
- (v) Violations of Fire and Safety Ordinances, as contained in Chapter 5, City of Menasha Municipal Code.
- (w) Violations of Public Nuisance Ordinances, as contained in Chapter 11, City of Menasha Municipal Code.
- (x) Violations of Building Code Ordinances, as contained in Chapter 15, City of Menasha Municipal Code.

Exception. Applicable drug, gangs, and prostitution offenses will be abated immediately as allowed in Chapter 823, Wis. Stats.

- 4. Owner. The owner of the premises and his/her agents.
- 5. Persons associated with. Any person who, whenever engaged in a nuisance activity, enters, occupies, patronizes, visits or attempts to enter, occupy, patronize or visit a property. Includes any officer, director, customer, agent, employee or independent contractor of a property owner, tenant, or occupant.
- 6. Premises. An individual dwelling unit, an apartment building (all units included as one premises), or an individual business premises and associated common areas located in the City.

- (b) **Notice**. Whenever the Chief determines that three or more nuisance activities resulting in enforcement action have occurred at the 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 activities 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 appeals rights of the owner.
- (c) **Delivery of Notice**. The notice shall be deemed to be properly delivered if sent either by certified mail to the property owner's last known address, or if delivered in person to the property owner. If the property owner cannot be located, the notice shall be deemed properly delivered if left at the property owner's usual place of residence in the presence of a competent family member at least 14 years of age, or a competent adult currently residing there and who shall be informed of the contents of the notice. If a current address cannot be located, it shall be deemed sufficient if a copy of the notice is sent by certified mail to the last known address of the owner as identified by the records of the tax roll.

- (d) **Abatement Plan.** Any owner receiving notice pursuant to section (2) and (3), shall meet with the Chief, or his/her designee, within five business days of receipt of such notice. The parties shall review the nuisance activities occurring at the property and agree upon an 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.
- (e) **Additional Nuisance Activity.** Whenever the Chief determines that additional nuisance activity has occurred at a premises not less than 15 business 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 response and enforcement, by City personnel, for this and any subsequent nuisance activities. It shall also cause such charges and administrative costs to be assessed against the premises as a fee for current service authorized by 61.34 and 66.0628, Wis. Stats and collected as a special charge which the City may impose as a lien against the real estate upon which the premises is located.
- (f) **Appeal.** Appeal of the determination of the Chief of Police pursuant to either the notice, abatement plan, or the levying of special charges may be made solely to the City Council requesting a hearing. Notice of Appeal must be in writing and submitted to the City Council in care of the Mayor with a copy submitted to the Chief of Police within five business days. Chapter 68 of the Wisconsin Statutes does not apply to this ordinance.
- (g) **Penalties.** Any person who shall violate any provision of this subchapter shall be penalized pursuant to Section 11-7-9, City of Menasha Municipal Code, in addition to imposition of a fee for services constituting a special charge against the real estate imposed under section (5). Additionally, the City may pursue injunctive relief against the owner in the Circuit Court in the applicable county. All legal costs and attorney fees incurred by the City for enforcement of this Ordinance, pursuant to any remedy available, shall be payable to the City by the owner of the premises. Judgment for such obligations may be obtained by the City in either the Small Claims Court or Circuit Court for the applicable county.
- (h) **Severability.** If any portion of this Ordinance shall be deemed invalid or unconstitutional, the remaining portions of the Ordinance shall remain in full force and effect. Any invalid or unconstitutional provision of this Ordinance as determined by a Court of law may be severed from the Ordinance without affecting the validity or enforceability of the remaining provisions.

SEC. 11-7-9 PENALTY.

Any person who shall violate any provision of this chapter shall be subject to a penalty as provided in section 1-1-7 of this Code, in addition to the specific penalties provided in this chapter. Each day in which a violation of this chapter occurs or continues shall be a separate offense. This section shall not preclude the City from maintaining any appropriate action to prevent or remove a violation of this chapter.