

CHAPTER 25

CONSTRUCTION AND EFFECT OF ORDINANCES

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25.01 RULES OF CONSTRUCTION. In the construction of this Code of general 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.,” shall mean the Wisconsin Statutes in effect as published by the State of Wisconsin.

(2) GENDER, SINGULAR AND PLURAL. Every word in this Code and in any ordinance 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, limited liability companies, or other bodies politic and all entities capable of being sued, unless plainly inapplicable.

(4) 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.

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 any 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 Council hereby declares that they 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.

25.03 ADMINISTRATOR 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 Administrator 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 Administrator's office hours, subject to such orders or regulations as the Administrator 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 offense, 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 \$25 nor more than \$500, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution may have his or her motor vehicle operating privilege suspended for a period not to exceed five years, or be imprisoned in the County Jail until such forfeiture and costs are paid, under the terms of Section 800.095, Wis. Stats. Imprisonment in the County Jail for default in payment of a municipal forfeiture shall not exceed ninety days.

(b) Second and Subsequent Offense. Any person who shall violate any provisions of this Code shall, upon conviction thereof, forfeit not less than \$50 nor more than \$500, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution may have his or her motor vehicle operating privilege suspended for a period not to exceed five years, or be imprisoned in the County Jail until such forfeiture and costs are paid, under the terms of Section 800.095, Wis. Stats. Imprisonment in the County Jail for default in payment of a municipal forfeiture shall not exceed ninety days.

(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 PROPERTY OF PERSON CONVICTED.** 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 a suspension of the person's motor vehicle operating privilege or imprisonment of the person in the County Jail, or after the person convicted has been released from custody, issue an execution against his property for such forfeiture and costs.

(4) **USE OF CITATIONS.** (a) Where a citation has been issued to a person for

a violation of a City ordinance, the person named as the alleged violator in said citation may appear in court at the time specified in the citation, or may mail or deliver personally a cash deposit in the amount set forth on the citation, within the time and to the Municipal Court, or Clerk of the Municipal Court, as specified in the citation. If a person makes a cash deposit, the person may nevertheless appear in court at the time specified in the citation, provided that the cash deposit may be retained for application against any forfeiture, restitution, penalty assessment, jail assessment or other assessment that may be imposed by the court.

(b) If a person appears in court in response to a citation, that citation may be used as the initial pleading, unless the court directs that a formal complaint be made, and the appearance confers personal jurisdiction over the person. The person may then plead guilty, no contest or not guilty. If the person pleads guilty or no contest, the court shall accept the plea, enter judgment of guilty and impose a forfeiture, penalty assessment, jail assessment and such other assessments as may be established by statute. If the Court finds that the violation meets the conditions set forth in Section 800.093(1) Wis. Stats., the court may order restitution under said statute. A plea of not guilty shall put all matters in the case at issue, and the matter shall be set for trial.

(c) If the alleged violator makes a cash deposit or fails to appear in court, the citation may serve as the initial pleading and the violator shall be considered to have tendered a plea of no contest or submitted to a forfeiture, the penalty assessment imposed under State Statutes, and the jail assessment imposed under State Statutes, as well as any other assessments applying to the particular case under the Wisconsin Statutes and these Municipal Ordinances. The court may either accept the plea of no contest and enter judgment accordingly or reject the plea. If the court finds the violation to meet the conditions set forth in Section 800.093(1), Wis. Stats., the court may summon the alleged violator into court to determine if restitution shall be ordered under said statute. If the court accepts the plea of no contest, the defendant may move within ten (10) days after the date set for appearance to withdraw the plea of no contest, open the judgment and enter a plea of not guilty if the defendant shows to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise or excusable neglect. If the plea of no contest is accepted and that is subsequently changed to a plea of not guilty, no costs or fees shall be taxed against the violator, but a penalty assessment, jail assessment, and other applicable assessments under Wisconsin Statutes shall be assessed. If the court rejects the plea of no contest, an action for collection of the forfeiture, penalty assessment, jail assessment or other applicable assessments under the Wisconsin Statutes may be commenced. The City may commence action under Section 66.0114(1) Wis. Stats. The citation may be used as the complaint in an action for collection of the forfeiture, penalty assessment, jail assessment or other assessments provided for under Wisconsin Statutes.

(d) If the alleged violator does not make a cash deposit and fails to appear in court at the time specified in the citation, the court may issue a summons or warrant for the defendant's arrest or consider the nonappearance to be a plea of no contest and enter judgment accordingly if service was completed as provided under Section 968.04(3)(b)2, Wis. Stats., or by personal service by a City employee, or the City may commence an action for collection of the forfeiture, penalty assessment, jail assessment and any other applicable assessments under State law. The City may commence action under Section 66.0114(1). The citation may be used as a complaint in the action for the collection of the forfeiture, penalty assessment, jail assessment and any other applicable assessments under Wisconsin Statutes. If the court considers the nonappearance to be a plea of no contest and enters judgment accordingly, the court shall promptly mail a copy or notice of the judgment to the defendant. The judgment shall allow the defendant not less than twenty (20) days from the date of judgment to pay any forfeiture, penalty assessment, jail assessment and any other applicable assessments under the Wisconsin Statutes. If the defendant moves to open the judgment within six (6) months after the court appearance date fixed in the citation, and shows to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise or excusable neglect, the court shall reopen the judgment, accept a not guilty plea and set a trial date

(e) The issuance of a citation under this section shall not preclude a proceeding under any other ordinance or law related to the same or any other matter, nor shall the proceeding under any other ordinance or law relating to the same or any other matter preclude the issuance of a citation under this section.

(f) If the action is to be used in Municipal Court, the citation which shall be used shall be that provided for by Section 800.02(2), Wis. Stats.

25.05 REPEAL OF GENERAL ORDINANCES. Adoption of a revised Code shall not have the effect of repealing those ordinances which are not inconsistent with said revised Code. In addition, the Code shall not be considered to have repealed any special or charter ordinances of the City or parts of general ordinances relating to the following subjects which do not conflict with any of the provisions of the Municipal Code of the City of Kiel, as revised:

(1) Any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of such Code;

(2) The issuance of corporate bonds and notes of the City of whatever name and description; or other obligations promising or guaranteeing the payment of money;

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- (3) Fixing of salaries or wages of public officials or employees;
- (4) Rights, licenses, permits or franchises or the creation of any contractual obligation with the City;
- (5) The establishment of grades, curb lines and widths of sidewalks in the public streets and alleys.
- (6) The lighting of streets, sidewalks and alleys;
- (7) Any ordinance prescribing any fee or payment of money to the City;
- (8) Any regulations regarding plats or subdivisions in the City, or of annexation of territory to the City;
- (9) Prescribing traffic regulations for specific streets, such as ordinances establishing speed limits or designating one-way streets, no parking areas, truck routes, stop intersections, and intersections where traffic is to be controlled by signals;
- (10) Establishing or amending zoning regulations and creation of boards for enforcement of the zoning map or rezoning property;
- (11) The naming, changing, establishing or dedicating or any paving, widening, extension, vacating or opening of streets or public ways, public grounds and parks and other public places;
- (12) The letting of contracts with or without bids;
- (13) Tax and special assessment levies or charges;
- (14) The establishment of wards, ward boundaries and election districts;
- (15) Any ordinance regarding the creation and establishment of districts wherein all wires, cables, and other utility lines are required to be located underground;
- (16) Establishing positions or classifying positions of City officers and employees or any personnel regulations;
- (17) Any purchase of land;
- (18) Any releases of persons, firms or corporations, limited liability companies or limited liability partnerships from liability;

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- (19) Construction of any public works;
- (20) Ratification or rescission of any agreement with the City or the act of any municipal officer, board or commission;
- (21) Water, sewer and electric main and line construction, and establishment of water, sewer and electric rates, rules and regulations;
- (22) Budget ordinances, resolutions and actions, and appropriations;
- (23) Claim approvals;
- (24) Municipal utility regulations;
- (25) Establishment and regulation of cable communications systems;
- (26) Code of ethics;
- (27) Any ordinance which is temporary although general in effect;
- (28) Any ordinance which is special although permanent in effect; and
- (29) Any ordinance containing any administrative provisions.

25.06 EFFECT OF AMENDMENT. The amendment of any section or provision of this Code or of any other ordinance or resolution of the Council shall be governed by the following rules:

(1) Any additions or amendments to this Code, when passed in such form as to indicate the intention of the Common Council to make such additions or amendments a part of this Code, are incorporated in this Code. A reference to this Code shall be understood as including such additions and amendments. All ordinances passed subsequent to the adoption of the Code as revised, which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion therein. When subsequent ordinances repeal any chapter, section or subsection or any portion thereof, such repealed portions may be excluded from this Code by the omission of same from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as this Code and subsequent ordinances numbered or omitted are readopted as a new code of ordinances by the Common Council.

(2) Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this

Code being amended in the following language: “That section _____ of the Municipal Code of the City of Kiel, Wisconsin, is hereby amended to read as follows:...” The new provisions shall then be set out in full as desired.

(3) If a new section not then existing in the Code is to be added, the following language shall be used: “That the Municipal Code of the City of Kiel, Wisconsin, is hereby amended by adding a section to be numbered _____, which section shall read as follows:...” The new section shall then be set out in full as desired.

(4) All sections, articles, chapters or provisions of this Code desired to be repealed must be specifically repealed by section, article or chapter number, as the case may be.

25.07 EFFECT OF REPEALS. The repeal of any section or provision of this Code or of any other ordinance or resolution of the Council shall be governed by the following rules:

(1) The repeal of an ordinance shall not revive any ordinance in force before or at the time the ordinance repealed took effect.

(2) The repeal of an ordinance shall not affect a punishment or penalty incurred before the repeal took effect or any suit, prosecution or proceeding pending at the time of the repeal for an offense committed or cause of action arising under the ordinance repealed.

25.08 TITLE: EFFECTIVE DATE: CITATION. These ordinances shall be known as the “Municipal Code of the City of Kiel, Wisconsin” and shall take effect from and after passage and publication as provided in Section 62.11(4) and all other relevant provisions of the Wis. Stats. All references thereto shall be cited by section number (example: Section 13.06, Municipal Code of the City of Kiel).

25.09 KEEPING CODE CURRENT: REVISER’S AMENDMENTS. The following provisions shall govern the keeping current of the Municipal Code and revisions to the Code:

(1) By contract or by City personnel, supplements to this Code shall be prepared and printed. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered as to fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of adoption of the latest ordinances included in the supplement.

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(2) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(3) When preparing a supplement to this Code, the reviser shall make no substantive changes to such ordinances or resolutions but may renumber, rearrange and edit them first without 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 Municipal Code affected thereby.