

CHAPTER 10

PUBLIC NUISANCES

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10.01 PUBLIC NUISANCES PROHIBITED. No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the City.

10.02 PUBLIC NUISANCE DEFINED. A public nuisance is a thing, act, occupation, condition or use of property which continues for such length of time as to:

(1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.

(2) In any way render the public insecure in life or in the use of property.

(3) Greatly offend the public morals or decency.

(4) 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.

10.03 PUBLIC NUISANCES AFFECTING HEALTH. The following acts, omissions, places, conditions and things are 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 10.02:

(1) **ADULTERATED FOOD.** All decayed, adulterated or unwholesome food or drink sold or offered for sale to the public.

(2) **UNBURIED CARCASSES.** Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within 24 hours after death.

(3) **BREEDING PLACES FOR INSECTS OR VERMIN.** Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material in which flies, mosquitoes, disease carrying insects, rats or other vermin can breed.

(4) **STAGNANT WATER.** All stagnant water in which mosquitoes, flies or other insects can multiply.

(5) **PRIVY VAULTS AND GARBAGE CANS.** Privy vaults and garbage cans which are not fly tight.

(6) **NOXIOUS WEEDS.** All noxious weeds and other rank growth of vegetation. All weeds and grass shall be kept cut to a height not to exceed 1'. The City may cause all weeds and grass to be cut and removed and brush to be removed and the cost thereof charged to the property as provided for in Section

10.09.

(7) 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.

(8) NOXIOUS ODORS, ETC. Any use of property, substances or things within the City emitting or causing any foul, offensive, noisome, noxious or disagreeable odors, gases, 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.

(9) STREET POLLUTION. Any use of property which causes any noxious or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the City.

(10) AIR POLLUTION. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the City or within one and one half miles there from in such quantities as to endanger the health of persons of ordinary sensibilities or threaten or cause substantial damage to property in the City.

(11) STORAGE OF JUNK, ETC., AND FAILURE TO TIMELY SET OUT AND RETRIEVE TRASH AND BULKY ITEMS FOR PICK-UP. The open storage of junk, refuse, litter, garbage, scrap or waste matter, disassembled, damaged, unlicensed or inoperable motor vehicles, whether awaiting repair or not, as well as placing trash or bulky items out for collections by the City more than 72 hours before a scheduled collection date or failing to retrieve from the curbside and re-store within 72 hours trash or bulky items not picked up by the City on a scheduled collection date.

(12) KEEPING OF ANIMALS AND FOWL. The keeping of more than 5 fur bearing animals within 300' of a residence or park or the keeping of more than 5 pigeons or 20 other fowl within 150' of a residence or park.

(13) JUNKED VEHICLES.(a) Definitions. The following definitions shall apply in the interpretation and enforcement of this ordinance:

(1) "Person" shall mean any individual, firm, partnership, association, corporation, company, or organization of any kind.

(2) "Vehicle" shall mean a machine propelled by power other than human power designated to travel along the ground, air or water by use of wheels, treads, runners, or slides and transport persons or property or pull machinery and shall include, without limitation, automobile, truck, trailer, motor home, motorcycle, tractor, buggy, wagon, boat and aircraft.

(b) no person shall keep any dismantled or partially dismantled, junked, wrecked, unregistered, unlicensed, or inoperable vehicle on any privately owned premises in the City, or upon any publicly owned premises within the City, including any street, highway other roadway, for a period of time in excess of 72 hours. Any such vehicle shall constitute a public nuisance, and any owner or keeper of such vehicle upon receiving written notice from the Chief of Police or his/her designee shall remove the vehicle or remedy the condition of the vehicle within 72 hours from the time and date served with the notice. If the vehicle and condition still exists after 72 hours of written notice, any owner or keeper of such vehicle shall be subject to forfeiture with each date of the existing condition resulting in a separate fineable offense. If the Chief of Police or designee has official police department documentation which shows that a property owner has previously received written notification within the past 12 months regarding violations under this ordinance: the 72 hour warning period is hereby waived and official enforcement can occur immediately.

(c) EXCEPTIONS

(1) A “junked vehicle” shall not include vehicles owned by a collector as defined in Sec. 341.266(1) of the Wisconsin Statutes, duly stored on the collector’s property as provided in Sec. 341.266(4) of the Wisconsin Statutes

(2) A vehicle shall not be considered junked as provided in this section if the vehicle is kept in an enclosed building, is in an appropriate storage place or depository maintained and authorized by the City, is kept in connection with and in the ordinary course of business of an automotive sales or repair business enterprise located on property that is properly zoned for that type of business.

(3) Storage of junked automobiles may be permitted only upon the issuance of a permit pursuant to the provisions of Section 175.25, Wisconsin Statutes, which statute is incorporated herein by reference.

(d) IMPOUNDING AND SALE

(1) Any junked vehicle found to be in violation of this section may be officially claimed as an “abandoned vehicle” and thereby impounded and disposed of upon five days written notice, as provided in Sec. 342.40 of the Wisconsin Statutes, and any other governing law. Notice shall be given by personal service or certified mail, return receipt requested. Except in the case of stolen vehicles, any cost incurred in the removal and sale of such vehicle shall be recovered from the owner of the vehicle. If the owner cannot be located after reasonable effort, the cost of removal and sale of the vehicle shall be charged to the property owner from which the vehicle is removed, and such charges may be entered as a special charge on the tax role. Any person who received a notice of vehicle impoundment and objects to all or any part thereof, may appeal to the City Council within written five (5) days of receipt of the notice and the City Council shall hear such appeal within 30 days of receipt of the written notice of appeal. No action to impound or sell a vehicle shall be taken if appeal is made

as provided in this section, until such time as a decision is made by the City Council. After such hearing the City Council may reverse, affirm, or modify the order of impoundment.

10.04 PUBLIC NUISANCES OFFENDING MORALS AND DECENCY. The following acts, omissions, places, conditions and things are 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 Section 10.02:

(1) **DISORDERLY HOUSES.** 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.

(2) **GAMBLING DEVICES.** All gambling devices and slot machines.

(3) **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.

10.05 DUTCH ELM DISEASE. (1) **PUBLIC NUISANCE DECLARED.** The City Council, having determined that the health of the elm trees within the City is threatened by a fatal disease known as Dutch elm disease, hereby declares the following to be public nuisances:

(a) Any living or standing elm tree or part thereof infected with Dutch elm disease fungus or which harbors any of the elm bark beetles.

(b) Any dead elm tree or part thereof, including logs, branches, firewood, stumps or other elm materials from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying insecticide.

(2) **PARK BOARD TO ENFORCE.** The Park Board shall have the powers and perform the duties imposed by this section and by Chapter 27, Wis. Stats. In carrying out such duties, it may employ a forester or designate a city employee to perform the duties of forester.

(3) **DEFINITIONS.** For the purpose of this section, the following phrases are defined as follows:

(a) Public Nuisance. 1. Dutch elm disease.

2. Elm bark beetles Scolytus multistriatus (Eichh) or Hylurgopinus rufipes (Marsh).

3. Any living or standing elm tree infected with Dutch elm disease fungus or in a weakened condition which harbors any of the elm bark beetles.

4. Any dead elm tree or part thereof, including logs, branches, firewood, stumps or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying concentrate.

(b) Public Property. Any premises owned or controlled by the city including, but not restricted to, public sites, parks, playgrounds, streets, alleys, sidewalks, boulevards and terrace strips between the lot line and the curb or improved portion of any public way.

(4) INSPECTIONS. (a) The Park Board shall inspect or cause to be inspected at least twice a year, all premises and places within the City to determine whether any public nuisance exists thereon. It shall also inspect any elm tree reported or suspected to be infected with Dutch elm disease or any elm bark bearing material reported or suspected to be infected with elm bark beetles.

(b) Whenever necessary to determine the existence of Dutch elm disease or elm bark beetles in any tree, the inspector shall remove or cut specimens from the tree in such manner as to avoid permanent injury thereto and forward them to the State Department of Agriculture, Trade and Consumer Protection for analysis to determine the presence of such nuisances.

(c) The Board and its agents or employees may enter upon private premises at reasonable times for the purpose of carrying out any of the provisions of this section.

(5) ABATEMENT OF NUISANCES. (a) The Park Board shall order, direct, supervise and control the abatement of public nuisances by spraying, removal, burning or other means which it determines to be necessary to prevent as fully as possible the spread of Dutch elm disease fungus or the insect pests or vectors known to carry such disease fungus.

(b) Whenever the Board determines that a public nuisance exists on public property in the City, it shall immediately abate or cause the abatement of such nuisance in such manner as to destroy or prevent as fully as possible the spread of Dutch elm disease or the insect pests or vectors known to carry such disease fungus.

(c) When the Board determines with reasonable certainty that a public nuisance exists upon private premises, it shall immediately serve personally or

by registered mail upon the owner of such property, if he can be found, or upon the occupant thereof, a written notice of the existence of such nuisance, directing that the nuisance be abated within 10 days after service of such notice. Such notice shall describe the nuisance and recommend the procedure for its abatement and shall state that, unless the owner abates the nuisance as specified in the notice, the Board will cause the abatement thereof at the expense of the property served. If the owner or occupant cannot be found, such notice shall be given by publication in a newspaper of general circulation in the City.

(6) SPRAYING. (a) Whenever the Board determines that any elm tree or part thereof is infected with Dutch elm disease fungus or is in a weakened condition and harbors elm bark beetles, it may cause all elm trees within a 1,000' radius thereof to be sprayed with an effective elm bark beetle destroying concentrate.

(b) To facilitate the work and minimize the inconvenience to the public of any spraying operation conducted under this section, the Board shall cause to be given advance public notice of such operation by newspaper, radio, television public service announcements or other effective means and shall cause the posting of appropriate warning notices in the areas and along the streets where trees are to be sprayed at least 24 hours in advance of spraying. When any residue or concentrate from municipal spraying operations can be expected to be deposited on any public street, the Board shall also notify the Chief of Police, who shall make and enforce such temporary parking and traffic regulations on such streets as conditions require. Temporary "no parking" notices shall be posted in each affected block of any street at least 24 hours in advance of spraying operations.

(c) If appropriate warning notices and temporary "no parking" notices have been given and posted in accordance with par. (b) above, the City shall not allow any claim for damages to any vehicle caused by such spraying operations.

(d) When trees on private property are to be sprayed, the Board shall notify the owner of such property and proceed in accordance with Sub. (5)(c).

(7) SPECIAL ASSESSMENTS FOR TREE CARE AND ABATEMENT. (a) The cost of abatement of a public nuisance or spraying elm trees or elm wood at the direction of the Board, if the nuisance tree or wood is located in a public park or on other public grounds, shall be borne by the City.

(b) The cost of abating a public nuisance or spraying elm trees or elm wood located on private premises or in the public right-of-way, when done at the direction and under the supervision of the Park Board, shall be assessed to the property on which such nuisance tree or wood is located or which abuts on

the public right-of-way in which such nuisance tree or wood is located, as follows:

1. The Board shall keep account of the cost of such work or spraying and the amount chargeable to each lot or parcel and shall report such work charges, the description of lands to which they are chargeable and the names and addresses of the owners of such lands to the City Administrator on or before October 15 of each year.

2. The City Administrator shall mail notice of the amount of such final assessment to each owner of property assessed at his last known address, stating that, unless paid within 30 days of the date of the notice, such assessment shall bear interest at the current legal rate and will be entered on the tax roll as a delinquent tax against the property; and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such assessment.

3. The City hereby declares that, in making assessments under this section, it is acting under its police power. No damages shall be awarded to any owner for the destruction of any diseased or infested elm tree or elm wood or part thereof.

(8) PROHIBITED ACTS. No person shall:

(a) Transport any bark bearing elm wood, elm bark or elm material on public streets or highways or other public premises without first securing the written permission of the Public Works Director.

(b) Interfere with or prevent any act of the Board, or of its agents or employees, while they are engaged in the performance of duties imposed by this section.

(c) Refuse to permit the Board or its duly authorized representative to enter upon his premises at reasonable times to exercise the duties imposed by this section.

(d) Permit any public nuisance to remain on any premises owned or controlled by him when ordered by the Board to abate such nuisance.

10.06 NUISANCE TREES. [#410 8/26/97] All trees which are a nuisance to public safety or are the cause of substantial annoyance to the general public.

(a) All cottonwood trees (of the Populous family) and all other trees bearing a cotton-like substance which can be carried by air currents, are hereby declared to be a menace to public health, safety, and welfare and a public

nuisance. No person, firm, corporation, or other business entity shall hereafter plant or set out cottonwood trees or other trees bearing a cotton-like substance within the City of Kiel. In the event that any such tree is planted or set out in the City of Kiel after the effective date of this ordinance, the Director of Public Works shall issue an order to the owner of said property on which such tree is located to remove the tree within ten (10) days after notification. If after ten (10) days the owner has failed to comply with the order, the Director of Public Works may cause such tree to be removed. The cost of such removal shall be chargeable to the owner of the property; and if not paid within thirty (30) days after the work is completed, the same shall be certified by the Director of Public Works to the City Administrator and shall be taxed and levied as a special assessment charge upon the real estate in the manner provided for the taxing of special assessments against the land. Any person, firm, corporation or other business entity who or which violates this section may also be charged under Section 25.04 of this Code, and each day the violation continues may be charged as a separate offense.

(b) Trees which are defined as bearing a cotton-like substance shall include, but not be limited to, female Cottonwood trees and female Silver Leaf Poplar trees (*Populus alba*). Bearing is defined as having a cotton-like substance growing on the tree, whether continually or merely seasonally.

10.07 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY. The following acts, omissions, places, conditions and things are 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 10.02:

(1) **DANGEROUS SIGNS, BILLBOARDS, ETC.** All signs, 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.

(2) **ILLEGAL BUILDINGS.** All buildings erected, repaired or altered in violation of City ordinances relating to materials and manner of construction of buildings and structures within the City.

(3) **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 official traffic control devices or railroad signs or signals or which because of their color, location, brilliance or manner of operation, interfere with the effectiveness of any such device, sign or signal.

(4) **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.

(5) **LOW HANGING TREE LIMBS.** All limbs of trees which project over and less than 12' above any public street or 8' above any public sidewalk.

(6) **DANGEROUS TREES.** All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.

(7) **FIREWORKS.** All use or display of fireworks except as provided by State laws and city ordinances.

(8) **BLIGHTED BUILDINGS AND PREMISES.** Premises existing within the City which are blighted because of faulty design or construction, failure to maintain them in a proper state of repair, improper management or because of the accumulation thereon of junk or other unattractive debris, structurally unsound fences (and other items which depreciate property values) and jeopardize or are detrimental to the health, safety, morals or welfare of the people of the City. Elimination of blighted premises and prevention of blighted premises in the future is in the best interest of the residents and this shall be fostered and encouraged by this chapter. It is essential to the public interest that this chapter be liberally construed to accomplish the purposes of this subsection.

a) "Blighted premises" are those which contribute to conditions that are dangerous to the public health, safety, morals and general welfare of the people; the conditions necessitate excessive and disproportionate expenditure of public funds for public health, public safety, crime prevention, fire protection and other public services; the conditions cause a drain upon public revenue and impair the efficient and economical exercise of governmental functions in such areas.

(b) Elimination of blighted premises and prevention of blighted premises in the future is in the best interest of the residents and this shall be fostered and encouraged by this chapter. It is essential to the public interest that this chapter be liberally construed to accomplish the purposes of this subsection.

(9) **LOW-HANGING WIRES AND CABLES.** All electrical wires and cables over streets, alleys or public grounds which are strung less than 18' above the surface thereof, and any other wires or cables less than 16' above the surface thereof.

(10) **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, greatly annoys or disturbs a neighborhood or any considerable number of persons within the City.

(11) 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, but including those 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.

(12) UNLAWFUL ASSEMBLIES. Any unauthorized or prohibited 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.

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

(14) PROHIBITED USES OF TRAILS AND PATHS. Use of the City-developed path along the Sheboygan River and other City-developed paths in the City of Kiel by ATV's and snowmobiles is prohibited. Use by horses, ATV's and snowmobiles of the asphalt trail between the City of Kiel and the City of New Holstein and any other similar trails in the City is prohibited.

10.08 ABATEMENT OF PUBLIC NUISANCES. (1) ENFORCEMENT. The Chief of Police, Fire Chief, and Building Inspector shall enforce those provisions of this chapter that come within the jurisdiction of their offices; and 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 has inspected or caused to be inspected the premises where the nuisance is alleged to exist and has satisfied himself that a nuisance does in fact exist.

(2) SUMMARY ABATEMENT. If the inspecting officer determines that a public nuisance exists within the City and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Mayor may direct the proper officer to cause the same to be abated and charge the costs thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.

(3) ABATEMENT AFTER NOTICE. If the inspecting officer determines that a public nuisance exists on private premises but that such nuisance does not threaten great and immediate danger to the public health, safety, peace, morals or decency, he shall serve notice on the person causing or maintaining the

nuisance to remove the same within 10 days. If such nuisance is not removed within 10 days, the proper officer shall cause the nuisance to be removed as provided in sub. (2).

(4) **OTHER METHODS NOT EXCLUDED.** Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the City or its officials in accordance with the laws of the State.

(5) **COURT ORDER.** Except when necessary under sub. (2), an officer hereunder shall not 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 such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.

10.09 COST OF ABATEMENT. In addition to any other penalty imposed by this 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 the owner, such cost shall be assessed against the real estate as a special charge.

10.10 PENALTY. Any person who shall violate any provision of this chapter, or any regulation, rule or order made hereunder, or permit or cause a public nuisance, shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.