

## **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 Town.

## 10.02 DEFINITIONS.

(A) **Public Nuisance.** 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; or
- (2) In any way render the public insecure in life or in the use of property; or
- (3) Greatly offend the public morals or decency; or
- (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.

(B) **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 subsection (A) above.

- (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 foul 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 And 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 as defined by statute or determined by ordinance shall be cut in accordance with §66.0407, Wis. Stats. The Town Board shall determine the most expeditious way of cutting such weeds and may

use Town labor and equipment and make reasonable charge for such service.

(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 Town 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 Town.

(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 Town.

(10) **Air pollution.** The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the Town in such quantities as to endanger the health of persons of ordinary sensibilities or threaten or cause substantial damage to property in the Town.

(11) **Animals at large.** Any animal not permitted to run at large as set forth in §9.07 of these ordinances.

(C) **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 subsection (A), above.

(1) **Gambling houses.** All gambling houses and buildings or structures kept or resorted to for the purpose of gambling other than those specifically licensed by the State of Wisconsin.

(2) **Gambling devices.** All gambling devices and slot machines, except those specifically licensed by the State of Wisconsin.

(3) **Unlicensed sale of liquor and beer.** 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 by the ordinances of the Town.

(4) **Illegal drinking.** Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of state laws or Town ordinances.

(5) **Continuous violation of town ordinances.** Any place or premises within the Town where Town ordinances or state laws relating to public health,

safety, peace, morals or welfare are openly, continuous, repeatedly and intentionally violated.

(D) **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 subsection (A), above.

- (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 Town ordinances relating to materials and manner of construction of buildings and structures within the Town.
- (3) **Unauthorized traffic signs.** All unauthorized signs, signals, markings or devises 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 devises or railroad signs or signals or which, because of their color, location, brilliance or manner of operation, interfere with the effectiveness of any such devise, 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 ten (10') feet above any public sidewalk, street or other public place.
- (6) **Dangerous trees.** Any tree which is so deteriorated, diseased, infected or infested with destructive insects which is a potential hazard to safety or welfare of the public.
- (7) **Dilapidated buildings.** All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human use.
- (8) **Low-hanging wires and cables.** All wires and cables over streets, alleys or public grounds which are strung less than fifteen (15') feet above the surface thereof.
- (9) **Noisy animals or fowl.** The keeping or harboring of any animal or fowl in a residential district as defined by Kenosha County Zoning Ordinance 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 Town.

(10) **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 Town 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.

(11) **Blighted buildings and premises.**

(a) Premises existing within the Town which are blighted because of faulty design or construction, failure to maintain them in a proper state of repair, improper management, or due to the accumulation thereof of junk or other unsightly 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 Town.

(b) The blighted premises 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.

(c) Elimination of blighted premises and prevention of blighted premises in the future is in the best interest of the citizens 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.

(12) **Vacant buildings.** As used in this section the word person shall mean any owner, association, firm, partnership or any agent or person having custody of a vacant building as defined herein.

Vacant building shall mean any structure used or intended to be used for human occupancy or storage building and vacated for a period of thirty (30) days.

No person shall keep, maintain or cause to be maintained any vacant building in the Town of Somers unless said building shall comply with the following conditions:

(a) All windows and exterior openings shall be properly maintained and kept in a reasonable weather-tight condition or otherwise boarded up to prevent damage and destruction to such exterior openings.

(b) The exterior walls, basement and foundation walls shall be kept in a reasonable weatherproof condition and all masonry shall be kept in proper repair and the premises generally kept in a rodent infestation-proof condition. Exterior walls shall be kept in a well maintained and painted condition compatible with other buildings in the adjacent areas.

(c) All yards or adjacent land shall be kept free of any accumulation of waste, garbage, materials, debris, automobile and machinery parts and appliances. Yards shall be kept in a sightly manner and weeds and growth of vegetation shall be eliminated and kept under control. Yards shall also be graded so as to prevent the accumulation of standing surface water.

(d) Any vacant building which does not comply with the foregoing conditions may be declared a nuisance and abated as set forth in §10.04 of this ordinance.

(13) **Wells**. Any well which is permanently or temporarily abandoned and not secured in the manner set forth in NR 112.06 of the Wisconsin Administrative Code.

(14) **Open lots**. Any open and insecurely guarded lot or parcel of land in the unincorporated Town of Somers or areas zoned for residential use or in areas that are predominantly residential in nature where surface waters are permitted to collect and continue for a period of forty-eight (48) hours to a depth of twelve (12") inches or more or in such condition that a child might be attracted to and drown or become seriously injured. This section does not apply to approved drainage plans as allowed in Chapter 18 of the Town ordinances.

(15) **Artificially dyed fowl**. No person may sell, give away, display or possess artificially treated, dyed or colored chicks, ducklings or other fowl except for persons engaged in the regular business of selling chicks, ducklings or fowl raised for food purposes.

(16) **Inoperative, junked or abandoned motor vehicles**. See §9.09 of this Municipal Code.

### **10.03 REGULATION OF LARGE ANIMALS AND FOWL.**

(A) **Purpose**. The use of land in the Town of Somers has been developing over the years from agricultural to urban but still has large land areas open to agricultural, residential, commercial and industrial zoned districts. Many owners of land desire to keep large animals, such as horses and cows or flocks of fowl on the premises. Such use has often been the source of a conflict between persons keeping such animals and neighbors who claim that the keeping of these animals constitutes a nuisance in the particular district. This ordinance is created to balance the opposing interests of persons who wish to keep animals and those who find such use of the land to be a nuisance.

(B) **Keeping Animals. Restricted.** No person shall keep, harbor, feed or breed any of the hereinafter described animals or fowl in any commercial, industrial or residential district except that the owners may keep any one, or a combination, of the following classifications of animals or fowl in any residential district containing not less than three (3) acres.

(1) **Horses.** Must have three (3) acres for the first horse, May have one (1) additional horse for each additional acre above three (3) acres.

(2) **Dairy Cows.** Must have three (3) acres for the first dairy cow. May have one (1) additional dairy cow for each additional acre above three (3) acres.

(3) **Fowl.** No more than one (1) flock of twenty (20) of any one chickens, geese, ducks or turkeys for each three (3) acre parcel.

(C) **Public Nuisance.** The owner shall do all things necessary to prevent the keeping of said animals or fowl from becoming a public nuisance. No building permit for an animal or fowl shelter shall be granted unless the Building Inspector shall visit the premises and determine that the construction of such shelter is located on the owner's premises, with sufficient setback from property lines, as to prevent such shelter from becoming a nuisance to neighbors.

(D) This ordinance shall not apply to any agriculturally zoned district.

## **10.04 ABATEMENT OF PUBLIC NUISANCES.**

(A) **Enforcement.** The Town Chairman, Fire Chief or his designee, Building Inspector, or other enforcement officers 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 Town has inspected or caused to be inspected, the premises where the nuisance is alleged to exist and has satisfied itself that a nuisance does in fact exist.

(B) **Summary Abatement.** If it is determined that a public nuisance exists within the Town and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Town Board may direct the proper officer to cause the same to be abated and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be, after first directing notice to the person causing, permitting or maintaining such nuisance or the owner or occupant of the premises to abate or remove such notice within twenty-four (24) hours and such notice shall state that unless the same is done, the Town will cause the nuisance to be abated and will charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.

(C) **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 ten (10) days. If such nuisance is not removed within ten (10) days, the owner of the property shall be served through Circuit Court an action taken to cause the

nuisance to be removed as provided in Chapters 66,230 and/or 823 of the Wisconsin Statutes, as may apply.

(D) **Other Methods Not Excluded.** Nothing in this Chapter shall be construed as prohibiting the abatement of public nuisances by the Town or its officials in accordance with laws of the State.

(E) **Court Order.** Except when necessary under subsection (B) above, 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 unless fire or other emergency requiring Fire Department involvement requires immediate action.

## **10.05 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 Town shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance; and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

## **10.06 HAZARDOUS MATERIAL INCIDENT RESPONSE REIMBURSEMENT.**

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

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

(C) **Emergency Services Response.** Emergency Services Response includes, but is not limited to: Fire Service, Public Works, Emergency Medical Service, and Law Enforcement. A person, firm or corporation who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall be responsible for reimbursement to the responding agencies for actual and necessary expenses incurred in carrying out their duties under this section. Actual

and necessary expenses may include but not be limited to: replacement of equipment damaged by the hazardous material, cleaning, decontamination and maintenance of the equipment specific to the incident, costs incurred in procurement and use of specialized equipment specific to the incident, specific laboratory expenses incurred in the recognition and identification of hazardous substances in the evaluation of response, decontamination, clean up and medical surveillance, and incurred costs in future medical surveillance of response personnel as required by the responding agencies' medical advisor.

(D) **Site Access**. Access to any site, public or private, where a prohibited discharge is indicated or suspected will be provided to Emergency Government officers and staff and to Town Fire personnel for the purpose of evaluating the threat to the public and monitoring containment, cleanup and restoration activities.

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

(F) **Enforcement**. The Fire Chief and his or her deputies, as well as Kenosha County Sheriff's Deputies, shall have authority to issue citations or complaints under this section.

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

(H) **Penalties**. Any person, firm or corporation in violation of this section shall forfeit to the Town upon conviction thereof not to exceed Two Hundred (\$200.00) Dollars plus the costs of prosecution. Each day of violation shall constitute a separate offense.

## **10.07 PENALTY.**

Any person who violates any provision of this chapter shall be subject to a penalty as provided in §25.04 of this code. A separate offense shall be deemed committed on each day on which a violation of any provision of this chapter occurs or continues.