

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; and
- (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 twenty-four (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 one foot. 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 under Wisconsin Statute § 66.0627 (1999-2000).

(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 person 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 one mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or threaten or cause substantial damage to property in the City.

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) 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 for by the ordinances of the City.

(4) 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.

(5) Illegal Drinking -

Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of State laws.

10.05 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 ten (10') feet above any public sidewalk, street or other public place.

(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) 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. The Building Inspector or the Health Officer or their authorized agent may enter upon any premises during reasonable hours to determine conditions.

(9) 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.

(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 unlawful 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) 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 due to the accumulation thereon 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 City.

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.

Elimination of blighted premises and prevention of blighted premises in the future is in the best interests 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.

10.06 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 know 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 Scolytus multistriatus (Eichh) or Hylurgopinus rufipes (Marsh).
- (b) 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 insecticide.

(2) Superintendent of Public Works -

The Superintendent of Public Works shall have the powers and perform the duties imposed by this section and by Ch. 27, Wis. Stat.

(3) Definitions -

For the purpose of this section, certain words and 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 restrict 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 Superintendent of Public Works shall inspect at least twice a year all premises and places within the City to determine whether any public nuisance exists thereon. He 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 infested with elm bark beetles.

- (b) Whenever necessary to determine the existence of Dutch Elm Disease or elm bark beetles in any tree, the Superintendent of Public Works 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 for analysis to determine the presence of such nuisances.
 - (c) The Superintendent of Public Works and his 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 Superintendent of Public Works shall order, direct, supervise and control the abatement of public nuisances by spraying, removal, burning or other means which he 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 Superintendent of Public Works determines that a public nuisance exists on public property in the City, he 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 Superintendent of Public Works determines with reasonable certainty that a public nuisance exists upon private premises, he 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 ten (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 Superintendent of Public Works shall 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 Superintendent of Public Works 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, he may cause all elm trees within a 1,000 foot 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 Superintendent of Public Works 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 twenty-four (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 Superintendent of Public Works 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 twenty-four (24) hours in advance of spraying operations.

- (c) If appropriate warning notices and temporary "no parking" notices have been given and posed in accordance with subparagraph (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 Superintendent of Public Works shall notify the owner of such property and proceed in accordance with subparagraph (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 Superintendent of Public Works 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 Superintendent of Public Works 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 Superintendent of Public Works 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 Clerk on or before October 15 of each year.
 - 2. The City Clerk 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 thirty (30) days of the date of the notice, such assessment shall bear interest at the rate of 8% per annum 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 Superintendent of Public Works.
- (b) Interfere with or prevent any act of the Superintendent of Public Works or his agents or employees while they are engaged in the performance of duties imposed by this section.

- (c) Refuse to permit the Superintendent of Public Works or his 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 Superintendent of Public Works to abate such nuisance.

10.07 Littering

(1) Definitions -

For the purposes of this section, the following terms, phrases and words shall have the meaning given herein:

(a) Authorized Private Receptacle -

A litter storage and collection receptacle, which is enclosed, and approved by the Superintendent of Public Works for rubbish.

(b) City -

The City of Sheboygan Falls.

(c) Garbage -

Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

(d) Litter -

Includes garbage, refuse and rubbish.

(e) Person -

A person, firm, partnership, association, corporation, company or organization of any kind.

(f) Private Premises -

Any dwelling, house, building or other structure designed or used, either wholly or in part, for private residential purposes, and for any business purposes, whether used temporarily or continuously, or vacant, and shall include any yard, grounds, walk, driveway, porch steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.

(g) Public Place -

All streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings.

(h) Refuse -

All putrescible and nonputrescible solid wastes (except bodily wastes), including garbage, ashes, street cleanings, dead animals and solid market and industrial waste and shall include all unsightly items being used for outdoor storage purposes for which use such items were not originally intended.

(i) Rubbish -

Nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, food, glass, bedding, crockery and similar materials.

(2) Litter In Public Places -

No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the City except in public receptacles, in authorized private receptacles for collection or in official City dumps as authorized.

(3) Placement of Litter In Receptacles -

Persons placing litter in public receptacles or in authorized private receptacles shall do so in such manner as to prevent it from being carried or deposited by the elements upon any street sidewalk or other public place or upon private property.

(4) Merchants and Businessmen to Keep Exterior of Premises Free of Litter -

No person owning or occupying a place of business shall sweep into or deposit in any gutter, street or other public place within the City, accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying places of business within the City shall keep the exterior of their business premises free of litter.

(5) Litter in Parks -

No person shall throw or deposit litter on any occupied private property within the City, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place, or upon any private property. Such litter shall be disposed of weekly.

(6) Litter in Lakes and Fountains -

No person shall throw or deposit litter in any fountain, pond, lake, stream, bay or any other body of water in a park or elsewhere within the City.

(7) Litter On Occupied Private Property -

No person shall throw or deposit litter on any occupied private property within the City whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street,

sidewalk or other public place or upon any private property. Such litter shall be disposed of weekly.

(8) Owner to Maintain Premises Free of Litter -

The owner or person in control of any private property 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, which litter shall be disposed of weekly.

(9) Litter on Vacant Lots -

No person shall throw or deposit litter on any open or vacant private property within the City, whether owned by such person or not.

(10) Clearing of Litter from Open Private Property By City -

(a) The City Health Officer or the Building Inspector or their agents shall notify the owner of any open or vacant private property within the City, or the agent of such owner, to properly dispose of litter located on such owner's property which is dangerous to public health, safety or welfare or unsightly public nuisance. Such notice shall be by Registered Mail, addressed to the owner at his last known address.

(b) Upon the failure, neglect or refusal of any owner or agent so notified to properly dispose of litter, which is dangerous to the public health, safety or welfare, or an unsightly public nuisance, within five (5) days after receipt of written notice provided for in subparagraph (a) above, or within five (5) days after the date of such notice in the event the same is returned to the City Post Office Department because of its inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner, or agent, the City Health Officer or the Building Inspector or their agents shall pay for the disposing of such litter or order its disposal by the City.

(c) When the City has effected the removal of such dangerous litter or has paid for its removal, the actual cost thereof, plus accrued interest at the rate of 8% per annum from the date of the completion of the work, if not paid by such owner prior thereto, shall be charged to the owner of such property on the next regular tax bill forwarded to the owner by the City, and such charge shall be due and payable by the owner at the time of payment of such bill.

(d) Where the full amount due the City is not paid by such owner within twenty (20) days after the disposal of such litter as provided for in subparagraphs (a) and (b) above, then the City Health Officer or the Building Inspector or their agents shall cause to be recorded in the City Treasurer's Office a sworn statement showing the cost and expense incurred for the work, the date the work was done and the location of the property on which the work was done. The recording of such sworn statement shall constitute a lien and privilege on the property, and shall remain in full force and effect for the amount due in principal and interest, plus costs of court, if any, for collection, until final payment has been made. Such costs and expense shall be collected in the manner fixed by law for the collection of taxes and shall be subject to a delinquent penalty of 8%, if the same is not paid in full or on or before the date the tax bill upon which such charge appears becomes delinquent. Sworn statements recorded in accordance with the provisions hereof shall be evidence that all legal formalities have been complied with and that the work has been done properly and satisfactorily shall be full notice to every person concerned that the amount of the statement, plus

interest, constitutes a charge against the property designated or described in the statement, and that the same is due and collectible as provided by law.

10.08 Feeding Waterfowl Prohibited¹

No person shall feed or otherwise provide nutrition to waterfowl in or upon any street, sidewalk, park, or other public place within the City.

10.10 Abatement of Public Nuisances

(1) Enforcement -

The Chief of Police, the Fire Chief, the Building Inspector and the Health Officer 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 cost 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 ten (10) days. If such nuisance is not removed within ten (10) days, the proper officer shall cause the nuisance to be removed as provided in subparagraph (2) above.

(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 subparagraph (2) 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.

¹ Created by Ordinance No. 2-1993-94, Enacted _____, 1993.

10.11 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 to the owner, such cost shall be assessed against the real estate as a special charge.

10.12 Prohibited Discharges²

No person, firm or corporation shall discharge or cause to be discharged, leaked, leached or spilled upon any public street, alley, or public property, or onto the ground, surface waters, subsurface waters, or aquifers, or on any private property within the City, 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.

(1) 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(s) 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 men and equipment to comply or to complete the requirements of this section, the 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 City of Sheboygan Falls.

(2) Site Access -

Access to any site, public or private, where a prohibited discharge is indicated or suspected will be provided to City Police and Fire Department personnel for the purpose of evaluating the threat to the public and monitoring containment, cleanup and restoration activities.

(3) 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 senior City Police or Fire Official on the scene of the emergency may order an evacuation of the area or take other appropriate protective steps for a period of time until the City can take appropriate action.

(4) Enforcement -

The City Fire Chief and police officers shall have authority to issue citations or complaints under this section.

² Created by Ordinance No. 3-1988-89, Enacted August 15, 1988.

(5) Civil Liability -

Any person, firm or corporation in violation of this section shall be liable to the City of Sheboygan Falls for any expenses incurred by the City or loss or damage sustained by the City by reason of such violations.

(6) Penalties -

Any person, firm or corporation in violation of this section shall forfeit to the City of Sheboygan Falls upon conviction thereof not to exceed Two Hundred Dollars (\$200.00), plus the costs of prosecution and in default of payment thereof, imprisonment in the County Jail for ten (10) days. Each day of violation shall constitute a separate offense.

10.20 Penalty³

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.

³ Former Section 10.12 renumber by Ordinance No. 3-1988-89, Enacted August 15, 1988.