

## CHAPTER 6

### Public Nuisances

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#### **SEC. 11-6-1 PUBLIC NUISANCES PROHIBITED.**

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

#### **SEC. 11-6-2 PUBLIC NUISANCE DEFINED.**

A public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as to:

- (a) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;
- (b) In any way render the public insecure in life or in the use of property;
- (c) Greatly offend the public morals or decency;
- (d) 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.

#### **SEC. 11-6-3 PUBLIC NUISANCES AFFECTING HEALTH.**

The following acts, omissions, places, conditions and things are hereby specifically declared to be public health nuisances, but such enumeration shall not be construed to exclude other health nuisances coming within the definition of Section 11-6-2:

- (a) **Adulterated Food.** All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.
- (b) **Unburied Carcasses.** Carcasses of animals, birds or fowl not intended for human consumption or foods which are not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death.
- (c) **Breeding Places for Vermin, Etc.** Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material whatsoever in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed.
- (d) **Stagnant Water.** All stagnant water in which mosquitoes, flies or other insects can multiply.
- (e) **Garbage Cans.** Garbage cans which are not fly-tight.
- (f) **Noxious Weeds.** All noxious weeds and other rank growth of vegetation.

- (g) **Water Pollution.** The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage, creamery or industrial wastes or other substances.
- (h) **Noxious Odors, Etc.** Any use of property, substances or things within the Village or within four (4) miles thereof or causing any foul, offensive, noisome, nauseous, 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 Village.
- (i) **Street Pollution.** Any use of property which shall cause any nauseous or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the Village.
- (j) **Animals at Large.** All animals running at large.
- (k) **Accumulations of Refuse.** Accumulations of old cans, lumber, elm firewood and other refuse.
- (l) **Air Pollution.** The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the limits or within one (1) mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property.

#### **SEC. 11-6-3.5 OFFENSIVE INDUSTRIES.**

*(Ord. 2009-08)*

(a) **OFFENSIVE INDUSTRIES.** No person, organization or corporation shall operate, locate, manage, construct or maintain any offensive industry as defined herein in, or within two (2) miles of, the Village limits, except pursuant to a permit issued under this section. Any offensive industry constructed or operated in violation of this section is declared to be a public nuisance.

(b) **"OFFENSIVE INDUSTRY" DEFINED.** An "offensive industry" shall mean any industry or business that conducts or is likely to conduct a nauseous, offensive or unwholesome operation that is likely to adversely affect the health, safety or comfort of persons of ordinary sensibilities within the Village by reason of noise, dust, vibration, environmental pollution (air or water), odor, vermin, unsightliness, vapor, gases, safety, or other condition. Offensive industries shall include, but not be limited to the manufacture or production of cement, asphalt, lime, gypsum, plaster of Paris, acid, explosives, fertilizers or glue, rendering plants, refineries or incinerators, stockyards or slaughterhouses, manure or other waste storage or digesters, junk or salvage yards, drop forges or foundries, storage of gasoline or petroleum in excess of 50,000 gallons, quarrying and extraction of minerals.

(c) **PERMIT REQUIRED.** Any person or entity conducting or intending to conduct any offensive industry shall apply for and obtain a permit to operate such industry from the Village Board and shall comply with all limitations, regulations, standards and conditions imposed in connection with such permit.

(d) **PERMIT APPLICATIONS.**

1. Applications for permits to construct or operate an offensive industry shall be made on a form prescribed by the Village Clerk-Treasurer. Fifteen (15) copies of all application materials shall be filed with the Clerk-Treasurer.

2. An application shall not be deemed complete unless it contains all information required by the form, and is accompanied by an application fee of \$250.00. The application shall include a description of all proposed facilities and processes involved in the operation and may be accompanied by any surveys, engineering reports, environmental studies or other information which the applicant wishes to have considered as part of the application.

3. The Village Board shall hold a public hearing on the application following publication of a Class 1 notice. A copy of the notice and the application shall be sent to the town board of any town in which the proposed industry is located, and to the Village Plan Commission, with a request for a recommendation on the application.

4. Following the public hearing, the Village Board shall approve, deny or conditionally approve the application. The Board shall approve the application and grant the permit if it finds that the applicant has demonstrated that the operation of the industry in compliance with all proposed conditions, regulations and standards to be included with the permit:

- a. Will not adversely affect the public health, safety or welfare;
- b. Will not be hazardous, harmful or otherwise adverse to the environment or to the reasonable use and value of nearby properties or the Village in general;
- c. Will be designed and operated in a manner which minimizes adverse effects, including noise, dust, odors, smoke, light and visual impacts, on surrounding properties and the Village as a whole;
- d. Will not violate any state or federal law or local ordinance applicable to the operation or the property for which it is proposed.

(e) **VIOLATIONS.** Any person or entity violating the terms of this ordinance or conducting an offensive industry without a permit or violating any term or condition of the permit shall be subject to the following:

1. A forfeiture for any violation of not less than \$50.00 and not more than \$1,000.00 upon conviction, together with all applicable costs and surcharges. Each day that a violation continues shall be considered a separate offense.

2. An action for the abatement or removal of the public nuisance in the name of the Village or in the name of the State of Wisconsin with the Village Board as relator pursuant to §§823.01, 823.02 and 823.07, Wis. Stats.

#### **SEC. 11-6-4 PUBLIC NUISANCES OFFENDING MORALS AND DECENCY.**

The following acts, omissions, places, conditions and things are hereby 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 11-6-2:

- (a) **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.
- (b) **Gambling Devices.** All gambling devices and slot machines, except as permitted by state law.
- (c) **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 the ordinances of the Village.
- (d) **Continuous Violation of Village Ordinances.** Any place or premises within the Village where Village ordinances or state laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.
- (e) **Illegal Drinking.** Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of the laws of the State of Wisconsin or ordinances of the Village.

#### **SEC. 11-6-5 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.**

The following acts, omissions, places, conditions and things are hereby declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the definition of Section 11-6-2:

- (a) **Signs, Billboards, Etc.** All signs and billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated or constructed as to endanger the public safety.
- (b) **Illegal Buildings.** All buildings erected, repaired or altered in violation of the provisions of the ordinances of the Village relating to materials and manner of construction of buildings and structures within the Village.
- (c) **Unauthorized Traffic Signs.** All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing which purport to be or may be mistaken as an official traffic control device, railroad sign or signal or which, because of its color, location, brilliance or manner of operation, interferes with the effectiveness of any such device, sign or signal.
- (d) **Obstruction of Intersections.** All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.
- (e) **Tree Limbs.** All limbs of trees which project over a public sidewalk less than ten (10) feet above the surface thereof and all limbs which project over a public street less than fourteen (14) feet above the surface thereof.
- (f) **Dangerous Trees.** All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.

- (g) **Fireworks.** All use or display of fireworks except as provided by the laws of the State of Wisconsin and Ordinances of the Village.
- (h) **Dilapidated Buildings.** All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.
- (i) **Wires Over Streets.** All wires over streets, alleys or public grounds which are strung less than fifteen (15) feet above the surface thereof.
- (j) **Noisy Animals or Fowl.** The keeping or harboring of any animal or fowl which, by frequent or habitual howling, yelping, barking, crowing or making of other noises shall greatly annoy or disturb a neighborhood or any considerable number of persons within the Village.
- (k) **Obstructions of Streets: Excavations.** All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the ordinances of the Village or which, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished, or which do not conform to the permit.
- (l) **Open Excavations.** All open and unguarded pits, wells, excavations or unused basements accessible from any public street, alley or sidewalk.
- (m) **Abandoned Refrigerators.** All abandoned refrigerators or iceboxes from which the doors and other covers have not been removed or which are not equipped with a device for opening from the inside.
- (n) **Flammable Liquids.** Repeated or continuous violations of the ordinances of the Village or laws of the State relating to the storage of flammable liquids.
- (o) **Unremoved Snow.** All snow and ice not removed or sprinkled with ashes, sawdust, sand or other chemical removers, as provided in this Code.

#### **SEC. 11-6-6 ABATEMENT OF PUBLIC NUISANCES.**

- (a) **Summary Abatement.**
  - (1) Notice to Owner. If the inspecting officer determines that a public nuisance exists within the Village and that there is a danger of public health, safety, peace, morals or decency, notice may be served by the inspecting officer or an authorized deputy on the person causing, maintaining or permitting such nuisance or on the owner or occupant of the premises where such nuisance is caused, maintained or permitted; and a copy of such notice shall be posted on the premises. Such notice shall direct the person causing, maintaining or permitting such nuisance, or the owner or occupant of the premises, to abate or remove such nuisance within a period not less than twenty-four (24) hours or greater than seven (7) days and shall state that unless such nuisance is so abated, the Village will cause the same to be abated and will charge the cost thereof to the owner, occupant or person causing, maintaining or permitting the nuisance, as the case may be.
  - (2) Abatement by Village. If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the officer having the duty of enforcement shall cause the abatement or removal of such public nuisance.
- (b) **Abatement by Court Action.** If the inspecting officer determines that a public nuisance exists on private premises, but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals or decency, the inspector or sanitarian shall file a written report of such findings with the Village President who, upon direction of the Village Board, shall cause an action to abate such nuisance to be commenced in the name of

the Village in the Dane County Circuit Court in accordance with the provisions of Chapter 823, Wis. Stats.

- (c) **Court Order.** Except where necessary under Subsection (a), no officer hereunder shall use force to obtain access to private property to abate a public nuisance, but shall request permission to enter upon private property if such premises are occupied and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.
- (d) **Other Methods Not Excluded.** Nothing in this Chapter shall be construed as prohibiting the abatement of public nuisances by the Village or its officials in accordance with the laws of the State of Wisconsin.

#### **SEC. 11-6-7 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 Village shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance, such cost shall be assessed against the real estate as a special charge.

#### **SEC. 11-6-8 ENFORCEMENT; PENALTY.**

- (a) **Enforcement.** The Chief of Police, Fire Chief, Director of Public Works 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 Section 11-6-6 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 is satisfied that a nuisance does, in fact, exist.
- (b) **General Penalty.** Any person who shall violate any provision of this Chapter shall be subject to a penalty as provided in Section 1-1-6.