

PART III GENERAL LEGISLATION

CHAPTER 43 ABATEMENT OF NUISANCES

- 43.01 Public Nuisances Prohibited
- 43.02 Definitions.
- 43.03 Health Nuisances
- 43.04 Nuisance Activities
- 43.05 Offenses Affecting Public Safety and Peace
- 43.06 Chronic Nuisance Premises
- 43.07 Continuing Ordinance Violation
- 43.08 Enforcement
- 43.09 Summary Abatement
- 43.10 Non summary Abatement
- 43.11 Notice to Abate
- 43.12 Remedy from Abatement Order
- 43.13 Failure to Abate Nuisance
- 43.14 Abatement by Court Action
- 43.15 Other Methods Not Excluded
- 43.16 Cost of Abatement
- 43.17 Penalties

43.01 Public Nuisances Prohibited.

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

43.02 Definitions.

A. 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:

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.

B. Designated Official means the Chief of Police, Fire Chief, Building Inspector or Assistant Zoning Administrator or their designated representatives.

43.03 Health Nuisances.

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 nuisances that present a threat to the public health:

1. All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public;
2. 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 hours (24) after death;
3. The presence of any: decayed animal matter; vegetable matter; trash; rubbish; rotting lumber; bedding; packing material; scrap metal; and any material whatsoever of any nature or description, shape or composure, in which vermin such as flies, mosquitoes, insects, rats, mice or other potential disease-transmitting vermin may breed;
4. All stagnant water in which mosquitoes, flies or other insects can multiply;
5. Privy vaults and garbage cans which are not fly-tight;
6. All noxious weeds and other rank growth of vegetation;
7. All animals running at large;
8. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the Village limits in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial harm or injury to persons or property in the Village;
9. Discharge of pollution to any public well, river, stream, lake, or waterway;
10. Any use of property, substances or things within the Village emitting 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;
11. 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;
12. Any pet animal which discharges feces upon any property, public or private, not owned or under the control of the owner of the animal committing such act.

43.04 Nuisance Activities.

The following acts, omissions, places, conditions and things are hereby specifically declared to be public nuisances offending public health, safety and peace, but such enumeration shall not be construed to exclude other nuisances within the definition of Section 43.02 of this Chapter:

1. 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. Illegal gambling as defined in § 945.02, Wis. Stats., devices and slot machines;
3. 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 this Chapter;
4. 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.

5. Any place or premises where the possession, manufacture, distribution or delivery of a controlled substance or related offenses as defined in Chapter 961 of the Wisconsin Statutes occurs.
6. Maintaining a Drug Dwelling as defined in Chapter 961.42 of the Wisconsin Statutes.

43.05 Offenses Affecting Public Safety and Peace.

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 provisions in this Section:

1. All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use;
2. All inoperative, abandoned, wrecked, dilapidated, junked, unsightly, burned-out, partially salvaged, partially demolished or damaged motor vehicles, buses, house trailers, vans, tractors, be they truck or agricultural, farm implements, trailers of any kind, house trailers or any other vehicle or device designed to be upon the highway or used with or by on-the-highway or off the-highway vehicles;
3. 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;
4. 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;
5. All abandoned refrigerators, iceboxes or other containers having airtight doors or covers, from which the doors and other covers have not been removed or which are not equipped with a device for opening from the inside;
6. 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;
7. Repeated or continuous violation of the Ordinances of the Village;
8. Excavations.
 - a. Excavations shall be all open and unguarded pits, wells, excavations or unused basements freely accessible from any public street, alley or sidewalk.
 - b. No excavation for building or any other purposes in the Village, whether or not completed, shall be left open for more than sixty (60) days without preceding with the erection of a building thereon. In the event any such excavation remains open for more than sixty (60) days, the Designated Official shall order that the erection of a building on the excavation begin forthwith or in the alternative that the excavation be filled to grade and the site be returned to a condition similar to that which existed prior to the excavation.

- c. Such order shall be served upon the owner of record or his agent, where an agent is in charge of the premises, and upon the holder of an encumbrance of record in the manner provided for service of a summons in the circuit court. If the owner or a holder of an encumbrance of record cannot be found, the order may be served by posting it on the premises and by publishing in the official newspaper for two (2) consecutive publications at least ten (10) days before the time limited in the order commences to run.
- d. If the owner of the land fails to comply with the order within fifteen (15) days after service thereof upon him, the Designated Official shall cause the excavation to be filled to grade and the site to be returned to a condition similar to that which existed prior to the excavation, and the cost shall be charged against the real estate and entered in the next succeeding tax roll as a special tax, and shall bear interest at the rate of six percent (6%) per year from the date of the report by the Designated Official of the cost thereof.
- e. The term "excavation" includes depressions caused by filling two (2) or more sides of a plot of land, and shall include excavations for any purpose, basements, part basements or other excavations left as a residue of a burned or razed building, and such basements or excavations shall, after six (6) months, be subject to the same provisions as excavations made for the purpose of erecting new structures. This Section shall not apply to excavations in streets.
- f. All wells, septic tanks, cesspools and similar structures being used within the Village shall be protected by adequate sound covering of sufficient strength to prevent injury to any human being or animal. All wells, septic tanks, cesspools and similar structures in which are abandoned and which have not been used for six (6) months or more, shall be filled to grade by the owner of the land upon which the same is situated with properly tamped back filling with adequate provision for settling, so as to remove such abandoned well as a hazard to human and animal life and limb.
- g. The Designated Official may, at any time, order any well in the Village to be adequately covered or filled to grade as herein provided and as the facts warrant. Such order shall be in writing and be served upon the owner of and lien holder on the land, if any, in the same manner as hereinbefore provided in the case of excavations.
- h. Should the owner fail within fifteen (15) days after service of such order to properly cover or fill such well, the Designated Official shall cause the same to be done and the cost thereof shall be a lien on the real estate upon which such well is situated and entered upon the next succeeding tax roll as a special tax, and shall bear interest at the rate of six percent (6%) per year from the date of the Designated Official's report of the cost thereof.

43.06 Chronic Nuisance Premises

A. **Generally.** The following shall make the premises on which they occur Chronic Nuisance Premises:

1. Three (3) occurrences of nuisance activity on a premises within a Ninety Day period, whether or not any occurrences resulted in an enforcement action.
2. One (1) enforcement action resulting from the manufacture of a controlled substance or related offenses, as defined in Wis. Stat. Ch. 961.
3. One (1) enforcement action resulting from a nuisance activity, intentionally performed by an agent or employee of a lodging facility.
4. If the calls for service to a lodging facility are disproportionate to the number of rooms available for rent at the lodging facility.
5. A disproportionate number of calls for service to single premises during any 30 day period.

B. Definitions. The following terms shall be defined as follows in this Section.

1. **Additional Nuisance Activity.** Whenever the Designated Official determines that additional nuisance activity has occurred at a premises for which notice has been issued pursuant to Subsection (6) of this Section, that this nuisance activity has occurred not less than fifteen (15) days after notice has been issued nor more than one hundred eighty (180) days after the last enforcement action, and that reasonable efforts have not been made to abate the nuisance activity, the Designated Official may calculate the cost of public safety response and enforcement for this and any subsequent nuisance activities and cause such charges and administrative costs to be assessed and collected as a special charge.
2. **Designated Official.** The Village Director of Public Safety, Village Building Inspector, Village Fire Chief, and Village Clerk-Treasurer-Coordinator are Designated Officials.
3. **Calls for Service.** When a member or members of the Village of Lake Delton Police Department, Dells Delton Ambulance Service, Village Fire Inspectors, Zoning Inspectors, Sauk County Health Department, or authorized designees are asked to travel to a premises outside of regularly scheduled or similarly required visits. A Designated Official may determine whether a visit qualifies as a Call for Service.
 - a. Visits which DO NOT qualify as Calls for Service may include, but are not limited to or by, the following:
 - (1) Building inspections required by or for building permits;
 - (2) Fire inspections initiated only due to the passage of time;
 - (3) Zoning inspections related to zoning permit or variance applications; or
 - (4) Inspection by the Sauk County Health Department initiated by the premises owner's initial or renewal application for a permit from the Health Department.
4. **Enforcement Action.** Arrest, the issuance of a citation, or the issuance of a written warning.
5. **Lodging facility.** Includes a tourist rooming house, hotel, or bed and breakfast, as those terms are defined by Wis. Stat. § 97.01.

6. Notice. Whenever repeated occurrences of nuisance activities resulting in enforcement action have occurred at a premises on separate days, the Designated Official shall issue a written Notice to Abate the Nuisance Activity to the owner or manager of the premises. The Notice shall contain the street address or legal description sufficient to identify the premises, a description of the nuisance activities that have occurred at the premises, a date upon which the nuisance must be abated, and a statement indicating that the cost of future enforcement may be assessed as a special charge against the premises. The Notice shall also include the appeal rights of the owner. The Notice shall be delivered pursuant to Section 19.04 of the Code.
7. Nuisance Activity. Includes any of the following activities, behaviors, or conduct occurring on a premises, including but not limited to:
 - a. Violation of any Wisconsin Statutes which may result in criminal penalties.
 - b. Repeated violations of the Village Municipal Code.
 - c. Violations of Sections 43.03 through 43.05 of this Chapter.
 - d. Violations of any applicable Wisconsin Administrative Codes.
 - f. Violations of s.125.07(1)(a) Wis. Stats.
8. Owner. The owner of the premises and his or her agent.
9. Premises. A distinct dwelling unit, lodging place, or place of employment.
10. Public safety response means response by the Village of Lake Delton Police Department, the Delton Fire Department, or the Dells Delton EMS.

C. Non-summary Abatement for Chronic Nuisance Premises.

1. Warning Letter.
 - a. Upon determination by a Designated Official that a Chronic Nuisance Premises exists, a Warning Letter will be delivered to the owner, occupant, lessee, or agent of the property determined to be a Chronic Nuisance Premises. The Village Attorney shall inform the Village Board of the issuance of a warning letter.
 - b. The Warning Letter will provide the following information:
 - (1) Give a sufficient description to identify the property and shall include the parcel number and address.
 - (2) Quote appropriate ordinance section pertaining to the complaint.
 - (3) Describe the condition causing the nuisances.
 - (4) Include a description of corrective action which must occur to remedy the condition.
 - (5) Advise that the nuisances must be abated within a specific timeline after receipt of the Warning Letter.
 - (6) Advise that receipt is considered to have occurred two (2) days after mailing of the letter.
 - (7) Advise that failure to abate the nuisance within the timeline specified will result in further action.

- (8) Advise that the determination may be appealed.
2. Notice of Abatement Plan Meeting.
 - a. If the nuisance is not abated within the timeline specified in the Warning Letter, issued under Sub. A., the Village will serve a Notice of Abatement Plan Meeting to the property owner, in the manner prescribed by Sec. 43.11.
 - b. The Notice of Abatement Plan Meeting will:
 - (1) Establish a meeting time and location with a Designated Official no earlier than five (5) days after provision of the Notice.
 - (2) Give a sufficient description to identify the property where the nuisance is occurring and shall include the parcel number and address.
 - (3) Quote appropriate ordinance section pertaining to the complaint.
 - (4) Describe the condition causing the nuisance.
 - (5) Suggest corrective action to remedy the nuisance to discuss at the Meeting.
 - (6) Establish the amount, pursuant to Sec. 43.17, the property owner shall forfeit for either:
 - (a) Failing to attend the Abatement Plan Meeting; or
 - (b) Failing to abide by or complete the Abatement plan.
3. Abatement Plan Meeting. At the time and place established by Sub. 2, the Designated Official and the property owner shall:
 - a. Discuss and determine the corrective action necessary to remedy the nuisance.
 - b. Discuss and determine a timeline to abate the nuisance, including at least one specified commencement action occurring within five (5) days and completion occurring within a reasonable time.
 - c. Discuss that failure to commence action or abate the nuisance within the specified time will result in forfeitures in accordance with Sec. 43.17.
 - d. Draft an Abatement Plan.
 - e. Acknowledge and sign an Abatement Plan at the end of the meeting.
4. Abatement Plan. The Abatement Plan shall contain the following:
 - a. The dates setting the timeline to abate the nuisance, including at least one specified commencement action occurring within five (5) days and completion occurring no less than thirty (30) days after the Abatement Plan Meeting.
 - b. The actions to be completed by the property owner to abate the nuisance.
 - c. The forfeitures the property owner will make for failure to comply with or complete the Abatement Plan.
 - d. Acknowledgment and signature of a Designated Official and the property owner.
5. Abatement Order.
 - a. Any person who fails to follow or complete an Abatement Plan shall forfeit the amount listed in the Abatement Plan.

If a Designated Official determines that an Abatement Plan has not been followed or completed, the Designated Official shall determine that a public nuisance exists and follow the procedure under Sec. 43.14 43.06 Repealed and Recreated by 19-006 Passed: 6/24/2019 Published: 7/4/2019

43.07 Continuing Ordinance Violation.

Any violation of the Code that is not corrected within a reasonable time after notice from the Village to a responsible party is a public nuisance.

43.08 Enforcement.

It shall be the responsibility of the Chief of Police, Fire Chief, Zoning Administrator, or Building Inspector to enforce those provisions of this title 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 Chapter to abate a public nuisance unless the Designated Official 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.

43.09 Summary Abatement.

A. Notice. If the Designated Official determines that a public nuisance exists and that there is a great and immediate danger to the public health, safety, peace, morals or decency, he shall cause Notice to be served in the manner provided for service of a summons in circuit court upon the person causing, permitting or maintaining the nuisance or upon the owner or occupant of the premises where such nuisance is caused, permitted or maintained, and shall cause a copy of the Notice to be posted on the premises. Such Notice shall direct the person causing, permitting or maintaining such nuisance or the owner or occupant of the premises to abate or remove such nuisance within twenty-four (24) hours, 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, permitting or maintaining the nuisance, as the case may be.

B. 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 Designated Official having the duty of enforcement shall cause the abatement or removal of such public nuisance.

43.10 Nonsummary Abatement.

A. If a Designated Official determines that a public nuisance exists but that the nature of such nuisance is not such as to threaten imminent danger to the public health, safety, peace, morals, or decency, Notice to Abate the nuisance may be issued and served by the Designated Official pursuant to Section 43.11. The Notice shall order abatement of the nuisance within the time period specified therein and shall state that unless the 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; 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.

B. 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 Designated Official having the duty of enforcement shall cause the abatement or removal of such public nuisance.

43.11 Notice to Abate.

The Designated Official may attempt personal service on the owner, agent of the owner, occupant or other person causing, maintaining or permitting the nuisance at such person's last-known address. If this attempt is unsuccessful or impractical, the Designated Official shall post a copy of the Notice in a conspicuous place in or about the building where the nuisance exists and send Notice by first class mail to the last-known address of the owner or agent of the owner.

43.12 Remedy from Abatement Order.

Any person affected by an order under Sections 43.09 or 43.10, shall, prior to the abatement date, apply to the circuit court for an order restraining the Village from entering on the premises and abating or removing the nuisance, or be forever barred.

43.13 Failure to Abate Nuisance.

No person shall fail to comply with a lawful order to abate a public nuisance issued pursuant to this Chapter. Each day of noncompliance with a lawful order to abate issued pursuant to this Chapter is a separate violation.

43.14 Abatement by Court Action.

If the Designated Official shall determine 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, he shall file a written report of his findings with the Village Board, and 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 circuit court of Sauk County in accordance with the provisions of Chapter 823 of the Wisconsin Statutes.

43.15 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.

43.16 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, 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.

43.17 Penalties.

A. First Offense.

1. Any person who shall violate any provision of this Chapter or any regulation, rule or order made hereunder shall forfeit not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00).

B. Chronic Nuisance Premises.

1. Any person who shall fail to appear at an Abatement Plan Meeting, to follow an Abatement Plan, or to complete an Abatement Plan shall forfeit any right to participate in an Abatement Plan.

C. Suspension of License.

1. In addition to any penalty imposed for violation of a provision of this Chapter,

any licensee violating the provisions of Section 43.06 is subject to the suspension or termination of the license in accordance with the provisions of Chapter 19 of the Code.

D. Exceptions.

1. Enforcement actions do not establish a Chronic Nuisance Premises if all of the following apply:
 - a. The owner or an agent of the owner is responsible for commencement of the enforcement action;
 - b. The person responsible for commencement of the enforcement action commenced the action as soon as reasonably possible after learning of the nuisance; and
 - c. The person responsible for commencement of the enforcement action did not take any part in planning or allowing the nuisance.
 - d. If the premises is a lodging facility, the owner or agent complied with approved procedures in renting the premises.

E. Attorney's Fees. Successful prosecution of an action under this Chapter shall result in payment, by the party adjudged to have been in violation of this Chapter, of the Village's litigation costs, expenses, and reasonable attorney's fees.

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