

Chapter 11
PUBLIC NUISANCE

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Sec. 11-01. Public nuisances prohibited.

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

(Code 1982, § 10.01)

Sec. 11-02. 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:

- (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.

(Code 1982, § 10.02)

Sec. 11-03. 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 11-02 of this Code:

- (1) *Unburied carcasses.* Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within 24 hours after death.
- (2) *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.
- (3) *Stagnant water.* All stagnant water in which mosquitoes, flies or other insects can multiply.
- (4) *Privy vaults and garbage cans.* Privy vaults and garbage cans which are not flytight.
- (5) *Pea or bean vines.* The deposit of any decomposing or decaying pea or bean vines or similar matter which gives off an offensive odor, upon any fields or other open lands within the city.
- (6) *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.
- (7) *Noxious odors, etc.* Any use of property, substances or things within the city emitting or causing any foul, offensive, noisome, noxious or disagreeable odors, gases, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the city.
- (8) *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.

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- (9) *Air pollution.* The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the city or within one 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.

(Code 1982, § 10.03)

Sec. 11-04. 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 11-02 of this Code:

- (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.
- (6) *Nuisance-type business.* Nuisance-type business in accordance with the following:
 - (a) *Authority.* This subsection is enacted pursuant to § 66.0415 Wis. Stats.
 - (b) *Permit required.* No person shall conduct within or adjacent to the city any business which has a tendency to create a public nuisance, except upon permit issued by the council through the committee on health and subject to such conditions as it may impose.
 - (c) *Definition.* A "business which has a tendency to create a public nuisance" is one which, unless properly regulated, may create a public nuisance as defined in section 11-02 of this Code.

(Code 1982, § 10.04)

Sec. 11-05. 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 11-02 of this Code:

- (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.

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- (2) *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.
- (3) *Fireworks.* All use or display of fireworks except as provided by state laws and city ordinances.
- (4) *Low-hanging wires and cables.* All wires and cables over streets, alleys or public grounds which are strung less than 15 feet above the surface thereof.
- (5) *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.
- (6) *Obstructions of streets; excavations.* All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the streets, alleys, sidewalks or crosswalks, 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.
- (7) *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.
- (8) *Blighted buildings and premises.* Blighted buildings and premises as follows:
 - (a) 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.
 - (b) 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.

(Code 1982, § 10.05)

Sec. 11-06. Weed control.

- (1) *Required.* The owner of any land within the city shall destroy all noxious weeds and keep mowed all grasses, as defined in subsection (2) of this section, which grow on owner's property and on any terraces and ditches abutting such property.
- (2) *Defined.* The term "noxious weed" or "weeds" as used in this section shall include the following: Canada thistle; leafy spurge; field bindweed (creeping jenny); Canada goldenrod (oldfield); better-ticks; burdocks; cattails; chickweed (common); cocklebur; cockle crows; fan weed; pennycress; fleabane; daisy; giant ragweed; lamb's quarters; milkweeds; Mullen; garlic mustard; common reed grass; honey suckle; crown vetch; common mustard; ball myrtle; stinging nettles; ox-eye daisy; pepper grass; field pigweed; poison ivy; common ragweed; sandburs; shepherd's purse; smartweeds (lady's thumb); annual spurges; sticktight; bull thistle; tumbleweed; witchgrass; yarrow; milfoil; quackgrass; snapdragon; toadflax; sour dock; yellow dock; wild barley; poison sumac; purple loosestrife; spotted knotweed; buckthorn; brush (woody stemmed plant); all other plants defined as noxious by the Wisconsin Department of Natural Resources; and all other grasses over four (4) inches in height for developed residential properties and over six (6) inches in height for undeveloped properties as further defined below.

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- (a) Vacant or undeveloped properties which abut developed residential properties on more than one side shall be kept mowed to a maximum of six (6) inches in height.
 - (b) Vacant or undeveloped properties which abut developed residential properties on only one side and undeveloped properties abutting non-residential developed properties shall be kept mowed to a maximum height of six (6) inches for no less than the first 50 feet along the side of the property abutting the developed property and along any opened street right-of-way. The grasses on the remaining undeveloped property may be allowed to grow to a maximum of twelve (12) inches, but all noxious weeds as defined above, must be kept destroyed at all times.
- (3) *Posting of notice.* The weed commissioner shall annually, on or before May 15, publish at least once a week for two consecutive weeks, as a class II notice in the official newspaper, a notice that every person shall destroy noxious weeds as described in subsection (2) of this section.
- (4) *Powers and duties of weed commissioner.* Powers and duties of the weed commissioner shall be as follows:
 - (a) *Destruction of weeds on public lands.* The weed commissioner and deputy weed commissioners shall have authority to destroy all noxious weeds on public lands.
 - (b) *Destruction of weeds on private land.* The weed commissioner and his deputies shall see that weeds which are not destroyed by the property owner on private lands are destroyed, by the most economical method. The weed commissioner shall present to the finance director his account therefor for billing. The costs of destroying such weeds shall be entered on the tax roll of the property owner for destroying the weeds, and such tax shall be collected as other taxes are if the account is not paid. In case of railroads or other lands not taxed in the usual way, the amount chargeable against the railroads or other lands shall be certified by the city clerk to the state treasurer.
 - (c) *Entry.* The weed commissioner and his deputies may enter upon any lands within the city for the purpose of cutting or otherwise destroying weeds without being liable to an action for trespass or damage resulting from such entry and destruction, if reasonable care is exercised in the performance of the duty.
- (5) *Weed control penalty.* Penalties for violation of this section shall be as follows:
 - (a) If any property owner fails to destroy noxious weeds as required, after three days' written notice from the weed commissioner, the property owner, in addition to being charged with the cost of such destruction, shall also pay a forfeiture of an additional \$75.00 for the first offense, and a forfeiture of \$90.00 for a second or each subsequent offense. An administrative charge established by the Board of Public Works, adjusted not more often than annually, shall also be charged to the property owner.
 - (b) Property owners will receive a three-day written notice prior to being charged with a first offense under this section. No notice shall be required prior to charging additional offenses in the same calendar year.
- (6) *Native Wisconsin prairie areas.* Prairie areas will be allowed and shall not be subject to section 11-06 of the Municipal Code if the areas meet and are maintained as per the following criteria:
 - (a) Native prairie seeding. All seed mixes shall comply with all Wisconsin law. All native seeds shall be certified to be of Wisconsin origin or of an origin within a two hundred fifty (250) mile radius of the seeding site. All seeds shall be guaranteed by the supplier to be true to name and species and (except for ReGreen) shall not be cultivated varieties.
 - (b) These prairie areas are to be kept free of all "noxious weed" or "weeds" as defined in section 11-06(2) at all times.

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- (c) If at anytime these prairie areas do not meet section 11-06(6)(b) they shall be subject to destruction by the weed commissioner as per section 11-06(4) and weed control penalty 11-06(5).

(Code 1982, § 10.06; Ord. No. 1023, § 1, 6-8-2004; Ord 1247, 4-23-2013)

Sec. 11-07. Dutch elm disease.

- (1) *Public nuisance declared.* The council, having determined that the health of the elm trees within the city is threatened by a fatal disease known as Dutch elm disease, hereby declares Dutch elm disease to be a public nuisance to include without limitation:
 - (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.
 - (c) Elm bark beetles *Scolytus multistriatus* (Eichh) or *Hylurgopinus rufipes* (Marsh).
- (2) *Authority.* The director of public works and employees of the department of public works shall have the powers and perform the duties imposed by this section and by § 27.09Wis. Stats.
- (3) *Inspections.* Inspections shall be conducted in accordance with the following:
 - (a) Upon report or complaint of the existence of Dutch elm infection, the department of public works shall inspect all premises and places within the city where such infection is reported to exist to determine whether any public nuisance exists thereon. The department 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 director of public works or employees of the department 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 director of public works and employees of the department of public works may enter upon private premises at reasonable times for the purpose of carrying out any of the provisions of this section.
- (4) *Abatement of Dutch elm disease.* Dutch elm disease shall be abated as follows:
 - (a) The director of public works shall order, direct, supervise and control the abatement of public nuisances by spraying, removing, 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 director of public works or employees of the department 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 director 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 days after service of such notice. Such notice

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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 director will cause the abatement thereof at the expense of the property served. If the owner or occupant cannot be found, such notice shall be given by publication in a newspaper of general circulation in the city.

- (5) *Spraying.* Spraying shall be in accordance with the following:
- (a) Whenever the director of public works or employees of the department 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 director 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 24 hours in advance of spraying. When any residue or concentrate from municipal spraying operations can be expected to be deposited on public streets, the director shall also notify the chief of police, who shall make and enforce such temporary parking and traffic regulations on such streets as conditions require. Temporary no parking notices shall be posted in each affected block of any street at least 24 hours in advance of spraying operations.
 - (c) If appropriate warning notices and temporary no parking notices have been given and posted in accordance with subsection (5)(b) of this section, 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 director of public works shall notify the owner of such property and proceed in accordance with subsection (4)(c) of this section.
- (6) *Special assessments for tree care and abatement.* Special assessments for tree care and abatement shall be made as follows:
- (a) The cost of abatement of a public nuisance or spraying elm trees or elm wood at the direction of the director 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 director 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 city clerk 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 director of public works 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 30 days of the date of the notice, such assessment shall bear interest at the rate of eight percent 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.

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(7) *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 director of public works.
- (b) Interfere with or prevent any act of the director or employees of the department of public works while they are engaged in the performance of duties imposed by this section.
- (c) Refuse to permit the director or employees of the department of public works 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 director of public works to abate such nuisance.

(Code 1982, § 10.07)

Sec. 11-08. Abatement of public nuisances.

- (1) *Enforcement.* The chief of police, the fire chief, and the director of public works 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 ensure 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 public nuisance 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 nuisance within ten days. If such nuisance is not removed within ten days, the proper officer shall cause the nuisance to be removed as provided in subsection (2) of this section.
- (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) *Inspection warrants.* If consent to enter personal or real properties which are not public buildings, or to enter portions of public buildings which are not open to the public, for inspection purposes has been denied, the inspecting officer shall obtain a special inspection warrant under § 66.0119 Wis. Stats.

(Code 1982, § 10.10)

Sec. 11-09. Cost of abatement.

In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the city shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance; and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

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(Code 1982, § 10.11)

Sec. 11-10. Penalty.

Any person who shall violate any provision of this chapter, or any regulation, rule or order made under this chapter, or permit or cause a public nuisance shall be subject to a penalty as provided in section 1-05 of this Code.

(Code 1982, § 10.12)

Sec. 11-11. Smoking prohibited.

(1) *Definitions.* As used in this section:

Assisted living facility means a community based residential facility, as defined in Wis. State Sec. 50.01 (1g), a residential care apartment complex, as defined in s. 50.01(1d), or an adult family home, as defined in s. 50.01 (1) (b).

Child care center has the meaning given in s. 49.136 (1)(ad), Stats.

Correctional facility means any of the following:

1. A state prison, as defined or named in Wis. Stat. Section 302.01, except a correctional institution under s. 301.046 (1) or 301.048 (4) (b) if the institution is the prisoners place of residence and no one is employed there to ensure the prisoners incarceration.
2. A juvenile detention facility, as defined in s. 938.02 (10r), or a juvenile correctional facility, as defined in s. 938.02 (10p), except a juvenile correctional facility authorized under s. 938.533(3)
3. (b), 938.538 (4)(b), or 938.539 (5) if the facility is a private residence in which the juvenile is placed and no one is employed there to ensure that the juvenile remains in custody.
4. A jail, as defined in s. 165.85 (2) (bg), a Huber facility under s. 303.09, a work camp under s. 303.10, a reforestation camp under s. 303.07, or a lockup facility under s. 302.30.

Educational facility means any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board.

Electronic delivery device means any product containing or delivering nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. This includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

Notwithstanding Wis. Stat. Sec. 101.01 (5), "employment" means any trade, occupation, or process of manufacture or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged.

Enclosed place means a structure of area that has a roof and more than two substantial walls.

Inpatient health care facility means a hospital, as defined in Wis. Stat. Sec. 50.33(2), a county home established under s. 49.70, a county infirmary established under s. 49.72, a nursing home, as defined in s. 50.01(3), a hospice, as defined in s. 50.90 (1), a Wisconsin veterans home under s. 45.50, or a treatment facility.

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Lodging establishment means any of the following:

- (a) A bed and breakfast establishment, as defined in s. 254.61 (1) Stats.;
- (b) A hotel, as defined in s. 254.61 (3) Stats.;
- (c) A tourist rooming house, as defined in s. 254.61 (6) Stats.

Person in charge means the person, or his or her agent, who ultimately controls, governs or directs the activities aboard a public conveyance or at a location where smoking is prohibited or regulated under this section.

Place of employment means any enclosed place that employees normally frequent during the course of employment, including an office, a work area, an elevator, an employee lounge, a restroom, a conference room, a meeting room, a classroom, a hallway, a stairway, a lobby, a common area, a vehicle, or an employee cafeteria. notwithstanding s. 101.01 (11), Stats.

Private club means a facility used by an organization that limits its membership and is organized for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose.

Public conveyance means a mass transit vehicle as defined in Wis. Stat. Sec. 340.01 (28m), a school bus as defined in s. 340.01 (56), or any other device by which persons are transported, for hire, on a highway or by rail, water, air, or guidewire within this state, but does not include such a device while providing transportation in interstate commerce.

Public place means any enclosed place that is open to the public, regardless of whether a fee is charged or a place to which the public has lawful access or may be invited.

Restaurant means an establishment as defined in s. 254.61 (5), Stats.

Retail electronic delivery device store means a retail establishment that does not have a “Class B “ or “Class A” intoxicating liquor license or a Class “B” or Class “A” fermented malt beverages license and that generates seventy-five percent (75%) or more of its gross annual income from the retail sale of electronic delivery devices and accessories.

Retail establishment means any store or shop in which retail sales is the principal business conducted.

Retail tobacco store means a retail establishment that does not have a Class B intoxicating liquor license or a Class B fermented malt beverages license and that generates 75 percent or more of its gross annual income from the retail sale of tobacco products and accessories.

Smoking means burning or holding, or inhaling or exhaling smoke from, any of the following items containing tobacco:

1. A lighted cigar.
2. A lighted cigarette.
3. A lighted pipe.
4. Any other lighted smoking equipment.

Smoking also includes the use of an electronic delivery device which creates an aerosol or vaper, in any manner or in any form, or the use of any oral smoking device.

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Sports arena means any stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other building where spectator sporting events are held.

State institution means a mental health institute as defined in s. 51.01 (12), Stats. or a center for the developmentally disabled as defined in s. 51.01 (3), Stats. or a secure mental health facility as which persons are committed under s. 980.06, Stats.

Substantial wall means a wall with no opening or with an opening that either does not allow air in from the outside or is less than 25 percent of the walls surface area.

Tavern means an establishment, other than a restaurant, that holds a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license.

Tobacco bar means a tavern that generate 15 percent or more of its annual gross income from the sale on the tavern premises, other than from a vending machine, of cigars and tobacco for pipes.

Tobacco product means any form of tobacco prepared in a manner suitable for smoking but not including a cigarette.

Treatment facility means a publicly or privately operated inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill, or developmentally disabled persons.

Type 1 juvenile correctional facility has the meaning given in s. 938.02 (19).

(2) *PROHIBITION AGAINST SMOKING.*

(a) Except as provided in subsection (4), no person may smoke in any of the following enclosed places:

1. Educational facilities.
2. Residence halls or dormitories owned or operated by a college or university.
3. Child care centers.
4. Inpatient health care facilities.
5. Theaters.
6. Correctional facilities.
7. State institutions.
8. Restaurants
9. Taverns
10. Private clubs
11. Retail establishments
12. Common areas of multiple-unit residential properties.
13. Lodging establishments
14. State, county, city village, or town buildings

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15. All enclosed places, other than the places listed above, that are places of employment or that are public places.
 - (b) No person may smoke at any of the following outdoor locations.
 1. Anywhere on the premises of a child care center when children who are receiving child care services are present.
 2. Anywhere on the grounds of a Type 1 juvenile correctional facility.
 3. A location that is 35 feet or less from a residence hall or dormitory that is owned or operated by the Board of Regents of the University of Wisconsin System.
 - (c) No person may smoke in any of the followings:
 1. A sports arena.
 2. A bus shelter.
 3. A public conveyance.
- (3) *RESPONSIBILITY OF PERSONS IN CHARGE.*
- (a) No person in charge may allow any person to smoke in violation of subsection (2) at a location that is under the control or direction of the person in charge.
 - (b) A person in charge may not provide matches, ashtrays, or other equipment for smoking at the location where smoking is prohibited.
 - (c) A person in charge shall make reasonable efforts to prohibit persons from smoking at a location where smoking is prohibited by doing all of the following:
 1. Posting signs setting forth the prohibition and providing other appropriate notification and information concerning the prohibition.
 2. Refusing to serve a person, if the person is smoking in a restaurant or tavern or private club.
 3. Asking a person who is smoking to refrain from smoking and, if the person refuses to do so, asking the person to leave the location.
 - (d) If a person refuses to leave a location after being requested to do so as provided in par. (c) 3., the person in charge shall immediately notify an appropriate law enforcement agency of the violation.
 - (e) A person in charge may take measures in addition to those listed in par. (b) and (c) to prevent persons from being exposed to others who are smoking or to further ensure compliance with this section.
- (4) *Exceptions.*
- (a) The prohibition against smoking in subsection (2) does not apply to the following places:
 1. A private residence.
 2. A room used by only one person in an assisted living facility as his or her residence.

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3. A room in an assisted living facility in which 2 or more persons reside if every person that lives in that room smokes and each of those persons has made a written request to the person in charge of the assisted living facility to be placed in a room where smoking is allowed.
4. A retail tobacco store that is in existence on June 3, 2009, and in which only the smoking of cigars and pipes is allowed.
5. A tobacco bar that is in existence on June 3, 2009, and in which only the smoking of cigars and pipes is allowed.
6. Retail electronic delivery device stores subject to the following:
 - A. The store may provide electric delivery devices and accessories for the purposes of sampling;
 - B. The store must have an entrance opening directly to the outside;
 - C. Smoking of tobacco products is prohibited; and
 - D. Service of food is not permitted

(5) *Penalties.*

- (a) Any person who violates subsection (2) shall be subject to a forfeit not less than \$100 and not more than \$250 per violation.
- (b) Except as provided in par. (c) or (d), any person in charge who violates subsection (3) shall be subject to a forfeiture of \$100 for each violation.
- (c) For violations subject to the forfeiture under par. (b), if the person in charge has not previously received a warning notice for a violation of subsection (3), the law enforcement officer shall issue the person in charge a warning notice and may not issue a citation.
- (d) No person in charge may be required under par. (b) to forfeit more than \$100 in total for all violations of subsection (3) occurring on a single day.

(6) *Injunction.* Notwithstanding s. 165.50, Stats., state or local officials or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of this section.

(7) All references to the Wisconsin statutes set forth herein shall include all acts amendatory thereof and supplementary thereto.

(Ord. No. 1108, § 1, 4-8-2008, ORD 1335 6/28/16)

Sec. 11-12. Use and Sale of Fertilizer

E. PURPOSE

(a) The purpose of this Section is to provide for the health, safety, and general welfare of the citizens of the City of Marshfield by regulating the amount of nutrients and contaminants, including phosphorus contained in fertilizer, to prevent or limit contamination of the City's natural groundwater system. The objectives of this Section are:

- (i) To regulate the sale of fertilizers containing phosphorus
- (ii) To regulate the application of fertilizers containing phosphorus

F. DEFINITIONS. For the purpose of this Section, the following definitions shall apply:

PUBLIC NUISANCE

- (a) "Agricultural Land Uses" means alterations or disturbances of land for the production of food and fiber including, but not limited to, general farming, livestock and poultry enterprises, grazing, nurseries, horticulture, viticulture, truck farming, forestry, sod production, cranberry production and wild crop harvesting.
- (b) "City" means the City of Marshfield.
- (c) "Fertilizer" has the meaning set forth in §94.64(1)(e), Wis. Stats. By definition, "fertilizer" includes "lawn fertilizer."
- (d) "Garden" means an area of exposed or partially exposed soils in which vegetables or flowers are grown.
- (e) "Lawn" means an area of natural or hybrid grass or similar turfs of ground cover customarily associated with and maintained in connection with homes, athletic fields, parks, cemeteries and other open space, in an urban or suburban environment, but not as an agricultural crop.
- (f) "Lawn Fertilizer" means any Fertilizer, applied by property owner, renter, or commercial entity, for other than Agricultural Land Uses, such as for lawns, golf courses, parks and cemeteries. Lawn Fertilizer does not include fertilizer products intended primarily for Garden and indoor plant application.

G. USE AND APPLICATION OF LAWN FERTILIZER

- (a) Effective January 1, 2009, no person shall apply any Lawn Fertilizer within the City that is labeled as containing more than 0% phosphorus and other compound containing phosphorus, such as phosphate, except as provided in Subsection (4) below.
- (b) Effective January 1, 2009, no Lawn Fertilizer shall be applied when the ground is frozen.
- (c) Effective January 1, 2009, no person shall apply Fertilizer to any impervious surface including parking lots, roadways, and sidewalks. If such application occurs, the Fertilizer must be immediately contained and either legally applied to turf or placed in an appropriate container.

H. EXEMPTIONS. The prohibition against the use of Fertilizer and Lawn Fertilizer under §(3) above, shall not apply to:

- (a) Newly established turf or Lawn areas during their first growing season.
- (b) Lawn areas that soil tests, performed within the past three years by a state of WI certified soil testing laboratory, confirm are below phosphorus levels established by the University of Wisconsin Extension Service. The Lawn Fertilizer application shall not contain an amount of phosphorus exceeding the amount and rate of application recommended in the soil test evaluation.
- (c) Agricultural Land Uses, Gardens, or application to trees or shrubs.
- (d) Yard waste compost, biosolids or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil.

I. SALE OF FERTILIZER CONTAINING PHOSPHORUS

- (a) Effective January 1, 2009, no person shall sell or offer for sale any Lawn Fertilizer within the City that is labeled as containing more than 0% phosphorus, or other compound containing phosphorus, such as phosphate, except such fertilizer may be sold for use as provided in Subsection (4) above.

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- (b) Effective January 1, 2009, no person shall display Lawn Fertilizer containing phosphorus. Signs may be posted advising customers that Lawn Fertilizer containing phosphorus is available upon request for uses permitted by Subsection (4) above.
 - (c) Effective January 1, 2009, a sign devised by the City identifying the effects of phosphorus on the region's waters and notifying the public of the limitations that take effect January 1, 2009 on the use and sale of phosphorus based fertilizers must be prominently displayed where Lawn Fertilizers are sold.
- (6) PENALTY. Any person who violates this Section in the application of Fertilizer at his or her residence and any commercial Fertilizer applicator, residential or commercial developer, industrial or commercial owner, or other person who violates this Section shall be subject to a forfeiture of \$75 for the first violation within a twelve month period, and \$150 for the second and each subsequent violation within a twelve month period.