

**CHAPTER 6
PUBLIC NUISANCES**

TOWN OF BURKE

DANE COUNTY, WISCONSIN

MAINTENANCE OF PREMISE AND STRUCTURES

The Town Board of the Town of Burke, Dane County, Wisconsin, do hereby ordain as follows:

Ordinances No. 9-6-1, 9-6-2, 9-6-3, 9-6-4, 9-6-5, 9-6-6, 9-6-7 are repealed and recreated as Sec. 9-6-1 of the Code of Ordinances to provide as follows:

(1) Purpose

The Town Board has found that there exists, and in the future may exist, buildings, structures and premises used for residential and non-residential use that are likely to affect, by reason of their maintenance or lack of it, the health, safety, and general welfare of the citizens and inhabitants of the Town. The general purpose of this Ordinance is to protect the public health, safety, and general welfare of the people of the Town. These general objectives include, among, others, the following purposes:

- (a) To protect the character and stability of all areas within the Town.
- (b) To provide minimum standards for the public health, safety and welfare of the persons occupying or using buildings, structures or premises.
- (c) To preserve the value of the land and buildings throughout the Town.

(2) Applicability

Every building, structure, and premises shall conform to the requirements of this Ordinance, irrespective of the class to which such building, structure and premises may otherwise belong, and irrespective of when such building may have been constructed, altered or repaired.

(3) **Interpretation**

This Ordinance shall be known as the “Public Nuisance Ordinance” and establishes minimum standards for maintenance of buildings, structures and premises and does not replace or modify standards otherwise established for the construction, replacement, or repair of buildings and structures. Any inconsistency or conflict between the provisions of this Ordinance and any other existing Ordinance shall not repeal such provision or Ordinance; but the provisions of the Ordinance shall be cumulative thereto.

(4) **Definitions**

For the purpose of this Ordinance, the following words and phrases shall have the meaning respectively ascribed to them by this section:

- (a) **Abandoned Dwelling.** A dwelling which is not occupied and which is not intended by the owner to be occupied within a reasonable period of time. A dwelling shall be presumed to be abandoned if it is unoccupied for a period of twelve (12) consecutive months. Occupancy required hereunder shall be bona fide and not acquired for the sole purpose of defeating the abandonment of a dwelling.
- (b) **Accessory Structure.** A structure, the use of which is incidental to that of the main building and which is attached thereto or located on the same premises.
- (c) **Adult.** A person who is 18 years of age or older.
- (d) **Basement.** That portion of a structure that has a floor below the surface of the ground immediately adjoining it.
- (e) **Building.** Any structure built for the support, shelter and enclosure of persons, animals, chattels, or movable property of any kind, and which is permanently or temporarily affixed to the land, or connected to a utility, and includes those structures resting on runners, wheels, or similar supports.
- (f) **Deterioration.** The condition of a structure, or part thereof, that is:
 - (i) So old, dilapidated, or has become so out of repair as to be dangerous, unsafe, unsanitary, or otherwise unfit for human habitation, occupancy, or use; or
 - (ii) Characterized by broken, cracked, crumbling, rusting, pitted, holed or rotten materials; broken, loose, or missing shingles; peeling or inadequate paint or stain, structural unsoundness; or

other evidence of decay, neglect, lack of maintenance, or excessive use.

- (iii) This term does not include old farm buildings not used for human living or sleeping purposes.
- (g) **Dwelling.** Any enclosed space which is wholly or partly used or intended to be used for living or sleeping by human occupants.
- (h) **Extermination.** The control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping, or by any other recognized and legal pest elimination methods approved by the Dane County Health Department.
- (i) **Fence.** An independent structure forming a barrier at grade between lots, between a lot and a street or an alley, or between portions of a lot or lots, and includes a wall or latticework screen, but excludes a hedge or natural growth, and excludes a barrier that is fewer than 18 inches in height that is used to protect plant growth.
- (j) **Garbage.** Garbage is all waste, animal, fish, fowl, or vegetable matter incident to and resulting from the use, preparation, and storage of food for human consumption.
- (k) **Infestation.** The presence of insects, rodents, vermin, or other pests on the premises, which constitute a health hazard.
- (l) **Nuisance.** Any one or more of the following conditions or items:
 - (i) Any nuisance known at common law, in equity jurisprudence, as described by the Wisconsin Statutes, or as described by the Town's ordinances.
 - (ii) Any attractive nuisance that may prove detrimental to the health or safety of any person on any premises or in any structure. This includes, but is not limited to: open basements and excavations that are not barricaded so as to prevent any person from falling into the basement or excavation; unused iceboxes, refrigerators, and freezers in which a person could be trapped; and any structurally unsound fence or structure.
 - (iii) Any abandoned, inoperable, or unlicensed vehicles, or any vehicle part that is visible, in whole or in part, from the ground at any place other than on the premises.

- (iv) The following items, if any such item is visible, in whole or in part, from the ground at any place other than on the premises for a period of time exceeding 48 hours: household finishing; furniture, and appliances. This does not include furniture intended for outdoor use.
- (v) Any building material, if any such material is visible, in whole or in part, from the ground at any place other than on the premises for a period of time exceeding 5 days, and the building material has not been used, in whole or in part, as a part of a building project during those 5 days.
- (vi) Any accumulation of stagnant water.
- (vii) Any plant or tree that constitutes a hazard to any person, such as a dead or dying tree or vine.
- (viii) Any uncovered soil that is subject to erosion.
- (ix) Any poison ivy, poison oak, poison sumac, or similar vegetation.
- (x) All solid waste including, but not limited to: all waste and all animal, fish, fowl, or vegetable matter incident to or resulting from the use, preparation, or storage of food; rubbish; waste material: combustible and non-combustible, resulting from housekeeping or an ordinary mercantile enterprise; debris; street cleaning; excelsior, paper, ashes, cinders, tin cans, bottles and broken glass, rotting wood piles; and significant amounts of grass clipping, brush, and loose leaves.
- (xi) Any garbage not in a secure storage facility.
- (m) **Occupant.** Any person living, sleeping or having actual possession of a building and/or premises.
- (n) **Owner.** Any person who, alone, jointly, or severally with others:
 - (i) Shall have legal title to any building and/or premises, with or without accompanying actual possession thereof; or
 - (ii) Shall have charge, care or control of any building and/or premises, as owner or agent of the owner, or an executor, administrator, trustee or guardian than of the estate of the owner. Any such

person thus representing the actual owner shall be bound to comply with the provisions of this Ordinance and of rules and regulations adopted pursuant thereto, to the same extent as if s(he) were the owner.

- (o) **Person.** The word “person” shall include a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as individuals, including a personal representative, receiver, or other representative appointed according to law.
- (p) **Premises.** A platted lot or part thereof or unplatted lot or parcel of land or plot of land, either occupied or unoccupied by a dwelling or non-dwelling structure and includes any such building, accessory structure or other structure thereon. This would include the area between the sidewalk and curb of the street.
- (q) **Refuse.** All solid waste (except body waste), including, but not limited to: garbage, rubbish ashes, street cleanings, abandoned, non-licensed or inoperable motor vehicles, and solid market and industrial wastes.
- (r) **Repair.** To restore to a state of operation, serviceability, or appearance in conformity with this Ordinance.
- (s) **Replace.** To remove an existing item or portion of a building or structure and to construct or install a new item of similar or improved quality as the existing item when it was new. Replacement will ordinarily take place when the item is incapable of repair.
- (t) **Resident.** Every person who occupies a structure or premises.
- (u) **Rubbish.** Rubbish is the miscellaneous waste material, combustible and non-combustible, resulting from housekeeping and ordinary mercantile enterprises, and includes but is not limited to boxes, cartons, excelsior, paper, ashes, cinders, tin cans, bottles and broken glass, rubber, grass clippings, brush, leaves, and garden plants.
- (v) **Structure.** Anything constructed or erected that requires location on the ground or is attached to something having location on the ground, including a building, dwelling, fence, freestanding wall, driveway, sign or other advertising medium.
- (w) **Substandard.** All buildings that do not conform to the minimum standards established by this chapter and by any other provisions of this code or ordinances or by the State of Wisconsin Administrative Code.

- (x) **Vehicle.** Any motorized items such as automobile, boat, motorcycle, aircraft, snowmobile, go-kart, etc. but excluding agricultural equipment.
- (y) **Vermin.** One or more rats, termites, or cockroaches, and other rodents, insects, or pests that constitute an actual or potential health hazard, excluding flies and mosquitoes that are not inside a structure.
- (z) **Weathering.** Deterioration, decay, or damage by exposure to the elements.
- (aa) **Yard.** An open space at grade on the same lot as a building or structure located between such building or structure and the adjoining lot line, and/or street line.
- (bb) **Meaning of Certain Words.** Whenever the words “building,” “structure,” and “premises” are used in this Ordinance, they shall be construed as though they were followed by the words “or any part thereof.”

(5) **Responsibilities of Owner, Resident, and Occupant Independent of Each Other.**

- (a) Owners and residents shall have all the duties and responsibilities as prescribed by this Ordinance. No owner or resident shall be relieved from any such duty and responsibility nor be entitled to defend against any charge of violation thereof by reason of the fact that the occupant is also responsible therefore in violation thereof.
- (b) Occupants shall have all the duties and responsibilities as prescribed in the Ordinance. No person shall attempt to contract away his responsibilities under this Ordinance.
- (c) **Minimum Standards.** No person shall occupy as owner/occupant or shall let or hold out to another for occupancy, any building or dwelling, for the purpose of living therein, or own or be in control of any vacant building or dwelling which is not safe, clean, sanitary, and fit for human occupancy, and which does not comply with the particular requirements of the following Subsections:
 - (i) The exterior of premises and all structures thereon shall be kept free of all nuisances, unsanitary conditions, and any hazards to the safety of occupants, pedestrians, and to the persons utilizing the premises. Any of the foregoing shall be promptly removed and abated by the owner or operator.

- (ii) The exterior of the premises and surrounding yard shall be kept free of hazards which include, but are not limited to: brush, weeds, broken glass, stumps, roots, obnoxious growths, filth, garbage, trash, refuse, abandoned, unlicensed or inoperable vehicles, and debris.
- (iii) Exterior porches, landings, balconies, stairs and fire escapes shall be provided with banisters or railings properly designed and maintained to minimize the hazard of falling, and the same shall be kept structurally sound, in good repair, and free of defects.
- (iv) Yards shall be kept substantially clear of debris and shall be provided with adequate lawn, ground cover, or vegetation. Hedges or bushes shall be cut or trimmed as often as necessary to maintain a neat and attractive appearance. All areas not covered by any of the foregoing shall be treated to prevent dust or the blowing or scattering of dust particles into the air. All trees, bushes, vegetation that overhang a public entrance, roadway or walkway, shall be properly trimmed to avoid obstruction of the view and movements of vehicles and pedestrians.
- (v) Every yard, court, driveway, or other portion of the lot shall be graded or drained so as to prevent the accumulation of stagnant water on any such surface. Driveways shall be maintained in good condition and repair.
- (vi) Every building, structure, and all exterior appurtenances on the premises shall be adequately protected against rats, mice, termites, and other vermin infestation. Owners shall be responsible for the extermination of rodents and vermin from that part of the premises under their exclusive control.
- (vii) Every building shall have adequate refuse, garbage, or rubbish storage facilities. No occupant shall accumulate rubbish, boxes, lumber, metal refuse, or other materials that may provide a harborage for rodents or vermin.
- (viii) The exterior of every structure or accessory structure, residential and non-residential, including fences, shall be maintained in good repair and all surfaces thereof shall be kept painted where necessary for purposes of preservation and appearance. The same shall be maintained free of broken, loose shingles, crumbling stone or brick, excessive peeling paint, or other conditions reflective of deterioration or inadequate maintenance.

- (ix) Every dwelling and accessory structure, exterior walls, siding, and roofs shall be kept structurally sound and in a state of good repair to avoid safety, health or fire hazards, and shall be so maintained as to be weather and water-tight. (The above applies to residential and non-residential properties.)
- (x) This Ordinance applies whether or not the premises are temporarily or continuously occupied or unoccupied, inhabited or uninhabited, commercial or non-commercial, and whether or not there is a structure, building, or other improvement upon the premises.

(6) Transfer of Ownership on Non-Complying Building

It shall be unlawful for the owner of any building, structure or premises who has received a compliance order or upon whom a notice of violation has been served to sell, assign, transfer, mortgage, lease or otherwise dispose of to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish to the Town a signed and notarized statement from the grantee, transferee, mortgagee, or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

(7) Enforcement

- (a) **Inspection of Premises and Structures.** The Town Chair or designee, Building Inspector, and Fire Chief are authorized to make one or more inspections of any premises or structure to determine whether such premises or structure comply with this ordinance. The Town Chair or designee, Building Inspector, and Fire Chief are authorized to obtain a special inspection warrant pursuant to Sec. 66.0119 Wis. Stats. The Town Chair or designee, Building Inspector, or Fire Chief may act pursuant to Sec. 66.0413 Wis. Stats.
- (b) **Notice.** Whenever the Town Chair or designee, Building Inspector, or Fire Chief believe that a violation of this section has occurred, the Town Chair or designee, Building Inspector, or Fire Chief may provide written notice of the violation to any owner of the premises, any adult resident of the premises, or any combination thereof as the Town Chair or designee, Building Inspector, or Fire Chief deem appropriate. The notice may be addressed to an owner or resident by name or as “Owner” or “Resident.” The notice mailed to any owner shall be mailed to the address to which the property tax bills for the premises are sent. The notice mailed to any resident shall be mailed to the resident’s address. Notice is effective upon mailing.

- (c) **30-Day Correction Period.** The owner(s), and/or adult resident(s), to whom a notice has been mailed, shall have 30 days from the effective date of the notice to correct the violation. The Town may extend this time if weather conditions do not permit correction within the 30-day period.
- (d) **Refer to Circuit Court.** If, upon expiration of the time given for correction of a violation, such correction is not made the Town Chair or designee, Building Inspector, or Fire Chief may file an action in the name of the Town in the Circuit Court, in accordance with the provisions of Chapter 823, Wis. Stats., as amended from time to time. The relief that may be sought by the Town in any such action includes but is not limited to an order allowing the Town to take steps necessary to eliminate or remove conditions constituting a nuisance, with the costs for doing so to be charged to the owner, resident or occupant; the Town may impose such charges as a special charge against real estate pursuant to sec. 66.0627, Wis. Stats., as amended from time to time.
- (e) **Defenses to Charge.** It shall be a defense to any charge under this section that:
 - (i) The person charged does not have the legal right to correct the condition upon which the charge is based.
 - (ii) A different person or persons have the legal responsibility to correct the condition upon which the charge is based.
 - (iii) The person charged does not have a legal right to reside on the premises and resides on the premises pursuant to permission that may be revoked at any time.
 - (iv) An item or items have been placed near a highway for the purpose of removal from the premises within 24 hours.
- (f) **Forfeiture.** In the event a violation of this section is not corrected within the 30-day correction period, each person found guilty of such a violation shall forfeit not less than \$25.00 nor more than \$200.00 for each violation plus all costs, fees, penalties, assessments, surcharges, and other charges that are or can be imposed by state law. Each day a violation occurs or exists after the effective date of the notice shall be considered a separate violation.
- (g) **Town Agreement After Forfeiture Is Imposed.** In the event forfeiture is imposed under this section, the Town and any owner or any resident may

stipulate that the amount of the forfeiture may be reduced to an agreed upon amount if the violation is corrected by an agreed upon date.

(8) Severability.

If any section, subsection, paragraph, clause, sentence, phrase or word contained in this Ordinance shall be declared invalid by a court of competent jurisdiction for any reason whatsoever, such decision shall not affect the remaining portion of this Ordinance, which shall remain in full force and effect and to this end the provisions of this Ordinance are hereby declared to be severable.

(9) Effective Date

This Ordinance shall take effect the day after its passage and publication pursuant to law. The Town Board of the Town of Burke at a regular meeting held on the _____ day of _____, 200_, duly adopted the above and foregoing Ordinance.

I hereby certify that the foregoing Ordinance regarding Maintenance of Premises and Structures was published as a Class I notice under ch. 985, Wis. Stats., on the ____ day of _____, 200_.

Dated: _____

Clerk/Treasurer