

CHAPTER 10

PUBLIC NUISANCES

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

10.02 PUBLIC NUISANCE DEFINED. A public nuisance is a thing, act, occupation, condition or use of property which continues for such length of time as to:

(1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;

(2) In any way render the public insecure in life or in the use of property;

(3) Greatly offend the public morals or decency;

(4) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property.

10.03 PUBLIC NUISANCES AFFECTING HEALTH. The following acts, omissions, places, conditions and things are specifically declared to be public health nuisances; but such enumeration shall not be construed to exclude other health nuisances coming within the definition of §10.02:

(1) ADULTERATED FOOD. All decayed, adulterated or unwholesome food or drink sold or offered for sale to the public.

(2) UNBURIED CARCASSES. Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within 24 hours after death.

(3) BREEDING PLACES FOR INSECTS OR VERMIN. Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material in which flies, mosquitoes, disease-carrying insects, rats or other vermin can breed.

(4) STAGNANT WATER. All stagnant water in which mosquitoes, flies or other insects can multiply.

(5) PRIVY VAULTS AND GARBAGE CANS. Privy vaults and garbage cans which are not fly-tight.

(6) REGULATION OF LAWNS AND NOXIOUS WEEDS. Except as provided in Section 10.03(6)(b), the owner or occupant of any lot or parcel in the Village of Plain which is 5 acres or less in area shall install and maintain landscaping, plantings or other decorative surface treatment, including turf grass, so as to present an attractive appearance in all yard areas in accordance with generally accepted landscaping practices in southern Wisconsin. Noxious weeds as defined by Section 10.03(6)(a)3 shall be destroyed. Lawns shall be maintained to a height not to exceed eight (8) inches. Plantings shall be maintained so as not to encroach onto adjoining properties or present hazards to adjoining properties or to persons or vehicles traveling on public ways and shall be maintained so as to enhance the appearance and value of the property on which located and thereby the appearance and value of the neighborhood and the Village.

(a) Definitions. The terms used herein are defined as follows.

1. Natural Lawns/Landscape. Any land managed to preserve or restore native Wisconsin grasses and forbes, native trees, shrubs, wildflowers, no-mow fescues and aquatic plants.

2. Natural Lawn Plan. A written plan relating to the management and maintenance of a lawn upon which the planted grass and wildflowers may exceed eight (8) inches in height, a statement of intent and purpose for the lawn, a detailed description of the vegetation types, plans and plant succession involved, and the specific management and maintenance techniques to be employed.

3. Noxious Weeds. For purposes of this subsection "Noxious Weeds" shall be all weeds as follows:

- a. Noxious Weeds as defined in §66.0407, Wis. Stats. (Canada thistle, leafy spurge, field bindweed or any weed designated as a noxious weed by the Department of Natural Resources by rule);
- b. Invasive weeds as defined in §23.22, Wis. Stats. which are non-indigenous species whose introduction causes or is likely to cause economic or environmental harm or harm to human health (Garlic Mustard, Black Locust, Common Teasel, Common Tansy, Japanese Knotweed, Common and Glossy Buckthorn, Exotic Bush Honeysuckle, Oriental Bittersweet or any plant designated by the Department of Natural Resources as invasive);
- c. Nuisance weeds as defined in §23.235, Wis. Stats (Purple loosestrife or any nonnative member of the genus Lythrum, Poison Ivy, Poison Sumac, Stinging Nettle, Wild Parsnip, Poison Hemlock, Bitter Nightshade, Jimson Weed, Ragweed, Cocklebur and Sandburs).

4. Turf Grass. Grass commonly used in regularly cut lawns or play areas such as, but not limited to blue grass, fescue and rye grass blends.

(b) Natural Lawn; Registration and Fee. See Fee Schedule. Any owner of a lot or parcel zoned Light Industrial or located in the Honey Creek Business Park may register for a natural lawn, as defined in Section 10.03(6)(a)1, where grasses and forbes may exceed 8 inches in height with the Village Clerk/Treasurer, provided that such plantings meet the requirements of this subsection.

1. Maintenance of Setbacks and Drainage Swales. A 10 foot setback on any street frontage and a 5 foot side and rear setback for all natural lawns shall be maintained in accordance with Section 10.03(6). In addition, all drainage swales shall be free of plantings and maintained in accordance with Section 10.03(6). Adjacent neighbors may agree to waive setbacks for encroachment on setbacks outside drainage swales; such waivers shall be in writing and filed with the Village Clerk/Treasurer. The setback area shall have a height of no more than 8 inches, excluding trees and shrubs.

2. Weeds and Plants Prohibited. The owners of all property with approved and permitted natural lawns shall destroy all weeds and plants as defined in Section 10.03(6)(a)3.

3. Review and Approval of Natural Lawn Plans. An owner of property or parcel in the Village desiring a Natural Lawn shall submit a proposed Natural Lawn Plan and fee as listed in the Schedule of Fees to the Village Clerk/Treasurer for consideration by Development and Planning Commission. The applicant shall also mail or deliver copies of the proposed Natural Lawn Plan to owners of record, as shown on the tax rolls of the Village who are owners of the property situated wholly or in part within 100 feet of the boundaries of the property for which the application is made. The applicant shall provide a statement to the Village that such notice has been given. Such notification to adjacent property owners shall include a statement that the neighboring property owners shall have fifteen (15) business days to provide written comments to the Village Clerk/Treasurer, and in the instance where 51% of the neighboring landowners object to establishing a natural lawn, the application shall be denied. The Development and Planning Commission can approve, deny the plan or modify the plan. The Development and Planning Commission shall consider the application for a natural lawn within 45 days of application submittal. The Village Clerk/Treasurer shall notify the applicant of the

Development and Planning Commission meeting and any action taken thereof on the application within ten (10) days subsequent to the meeting date.

4. Appeal and Reconsideration. Appeals from the grant or denial of a natural lawn plan shall be to the Village Board. The request for appeal must be made in writing to the Village Clerk/Treasurer within twenty (20) days of the date of delivery of the notice of the grant or denial of the application. When a hearing is requested, a hearing by the Village Board shall be held not less than twenty (20) days from the date of the property owner's request. At the hearing, interested parties may appear in person or by attorney, may present witnesses and may cross-examine witnesses. At the close of the hearing, the Village Board shall make a final and binding decision.

(c) Cultivation of Agricultural Crops. An owner of an undeveloped parcel may cultivate forage or legume crops that are harvested at least annually. Parcel owners choosing to cultivate permitted crops shall practice good agricultural and land conservation measures including practices to prevent erosion and the growth and spread of noxious weeds. No manures, fertilizers, herbicides and pesticides shall be applied within 100 feet of a residential dwelling. Undeveloped parcels with naturally occurring grasses and weeds are not considered forage crop for purposes of this section and shall comply with Section 10.03(6).

(d) Enforcement. If an owner of any property or parcel of land is found to be not in compliance with this Section or of any previously approved natural lawn fails to comply with the requirements of this subsection, such premises shall be deemed to be a public nuisance and the Village Board shall notify the property owner of the nuisance and direct the owner to abate said nuisance within a specified period of time. If the owner of any property or parcel so notified fails to abate such nuisance within the specified time period, the Public Works Director is authorized to take actions to abate the nuisance and charge the cost thereof back to the property owner as a special charge pursuant to Chap. 66.0627 Wis. Stats.

(e) Penalty. In addition to special charges assessed pursuant to Chap 66.0627, Wis. Stats., any person who violates, disobeys, neglects or refuses to comply with any of the provisions of this section shall be subject to forfeiture as provided in Section 10.12.

(7) WATER POLLUTION. The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage, creamery or industrial wastes, lawn clippings (yard waste as defined in chapter 9) or other substances.

(8) NOXIOUS ODORS, ETC. Any use of property, substances or things within the Village 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 Village.

(9) STREET POLLUTION. Any use of property which causes any noxious or unwholesome liquid, ~~or~~ substance or lawn clippings (yard waste as defined in Chapter 9) to flow into or upon any street, gutter, alley, sidewalk or public place within the Village.

(10) AIR POLLUTION. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the Village 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 Village.

10.04 PUBLIC NUISANCES OFFENDING MORALS AND DECENCY. The following acts, omissions, places, conditions and things are specifically declared to be public nuisances offending public morals and decency; but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of §10.02:

(1) DISORDERLY HOUSES. All disorderly houses, bawdy houses, houses of ill-fame, gambling houses and buildings or structures kept or resorted to for the purposes 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 Village.

(4) 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.

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

10.05 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY. The following acts, omissions, places, conditions and things are declared to be public nuisances affecting peace and safety; but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the definition of §10.02:

(1) DANGEROUS SIGNS, BILLBOARDS, ETC. All signs, billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated or constructed as to endanger the public safety.

(2) ILLEGAL BUILDINGS. All buildings erected, repaired or altered in violation of Village ordinances relating to materials and manner of construction of buildings and structures within the Village.

(3) UNAUTHORIZED TRAFFIC SIGNS. All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway which purport to be or may be mistaken as official traffic control devices or railroad signs or signals or which, because of their color, location, brilliance or manner of operation, interfere with the effectiveness of any such device, sign or signal.

(4) OBSTRUCTION OF INTERSECTIONS. All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.

(5) LOW-HANGING TREE LIMBS. All limbs of trees which project over and less than 10 feet above any sidewalk, street or other public place.

(6) DANGEROUS TREES. All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.

(7) FIREWORKS. All use or display of fireworks except as provided by State laws and Village ordinances.

(8) DILAPIDATED BUILDINGS. All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.

(9) 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.

(10) NOISY ANIMALS OR FOWL. The keeping or harboring of any animal or fowl which, by frequent or habitual howling, yelping, barking, crowing or making of other noises,

greatly annoys or disturbs a neighborhood or any considerable number of persons within the Village.

(11) **OBSTRUCTIONS OF STREETS; EXCAVATIONS.** All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the ordinances of the Village but including those which, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished or which do not conform to the permit.

(12) **UNLAWFUL ASSEMBLIES.** Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds or people to gather, obstructing traffic and free use of the streets or sidewalks.

10.06 **PUBLIC NUISANCE TREES PROHIBITED.** (1) **PUBLIC NUISANCE DECLARED.** The Village Board, having determined that certain species of trees or trees in diseased condition as female trees of the species Populus Deltoides, commonly called the "cottonwood"; all trees commonly called "seed-bearing box-elders" or Acer Negundo; and all trees bearing diseases which threaten the health of other trees within the Village, such as, but not limited to, elm trees infected with Dutch elm disease, are a public nuisance and shall be removed in the manner hereinafter provided.

(2) **CITY FORESTER.** The official designated shall have the powers and perform the duties imposed by this section and by Ch. 27, Wis. Stats.

(3) **DEFINITIONS.** For the purpose of this section, the following phrases are defined as follows:

(a) Public Nuisance.

1. Dutch elm disease.
2. Elm bark beetles. Scolytus multistriatus (Eichh) of Hylurgopinus rufipes (Marsh).
3. Any living or standing elm tree infected with Dutch elm disease fungus or in a weakened condition which harbors any of the elm bark beetles.
4. Any dead elm tree or part thereof, including logs, branches, firewood, stumps or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying concentrate.
5. All female trees of the species Populus Deltoides, commonly called the "cottonwood".
6. All trees commonly called "seed-bearing box-elders" or Acer Negundo, which may now or hereafter become infested with box elder bugs.
7. All trees bearing diseases which threaten the health of other trees within the Village, or are otherwise deemed a public nuisance by the designated official.

(b) Public Property. Any premises owned or controlled by the Village, including but not restricted to public sites, parks, playgrounds, streets, alleys, sidewalks, boulevards and terrace strips between the lot line and curb or improved portion of any public way.

(4) **INSPECTIONS.** (a) The designated official shall inspect at least twice a year all premises and places within the Village to determine whether any public nuisance exists thereon. He shall also inspect any elm tree reported or suspected to be infected with Dutch elm disease or any elm bark bearing material reported or suspected to be infested with elm bark beetles.

(b) Whenever necessary to determine the existence of disease or insect infestation in any tree, the designated official 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 to presence of such nuisances.

(c) The designated official and his agents or employees may enter upon private premises at reasonable times for the purpose of carrying out any of the provisions of this section.

(5) ABATEMENT OF NUISANCES. (a) The designated official shall order, direct, supervise and control the abatement of public nuisances by spraying, removal, burning or other means which he determines to be necessary to prevent as fully as possible the spread of disease fungus or insect pests or vectors known to carry such disease fungus.

(b) Whenever the designated official determines that a public nuisance exists on public property in the Village, 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 disease or the insect pests or vectors known to carry such disease fungus.

(c) When the designated official 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 directing that the nuisance be abated within 10 days after service of such notice. Such notice shall describe the nuisance and recommend the procedure for its abatement and shall state that, unless the owner abates the nuisance as specified in the notice, the designated Village official 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 Village.

(6) SPRAYING. (a) Whenever the designated official determines that any tree or part thereof is infected with disease fungus or is in a weakened condition he may cause all trees within a 1,000-foot radius thereof to be sprayed with an effective disease or insect-destroying concentrate.

(b) To facilitate the work and minimize the inconvenience to the public of any spraying operation conducted under this section, the designated official 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 any public street, the designated official 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 spraying operations.

(c) If appropriate warning notices and temporary "no parking" notices have been given and posted in accordance with par. (b) above, the Village 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 designated official shall notify the owner of such property and proceed in accordance with sub. (5)(c).

(7) SPECIAL ASSESSMENTS FOR TREE CARE AND ABATEMENT. (a) The cost of abatement of a public nuisance or spraying elm trees or elm wood at the direction of the designated official, if the nuisance tree or wood is located in a public park or on other public grounds, shall be borne by the Village.

(b) The cost of abating a public nuisance or spraying trees or wood located on private premises or in the public right-of-way, when done at the direction and under the supervision of the designated official, 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 of wood is located, as follows:

1. The designated official 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 Village Clerk/Treasurer on or before October 15 of each year.

2. The Clerk/Treasurer 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 8% per annum and will be entered on the tax roll as a delinquent tax against the property; and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such assessment.

3. The Village 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 tree or wood or part thereof.

(8) PROHIBITED ACTS. No person shall:

(a) Transport any bark bearing elm wood, elm bark or elm material on public streets or highways or other public premises without first securing the written permission of the designated official.

(b) Interfere with or prevent any act of the designated official or his agents or employees while they are engaged in the performance of duties imposed by this section.

(c) Refuse to permit the designated official or his duly authorized representative to enter upon his premises at reasonable times to exercise the duties imposed by this section.

(d) Permit any public nuisance to remain on any premises owned or controlled by him when ordered by the designated official to abate such nuisance.

10.10 ABATEMENT OF PUBLIC NUISANCES. (1) ENFORCEMENT. The Chief of Police, the Fire Chief, the Building Inspector and the Health Officer shall enforce those provisions of this chapter that come within the jurisdiction of their offices; and they shall make periodic inspections and inspections upon complaint to insure that such provisions are not violated. No action shall be taken under this section to abate a public nuisance unless the officer has inspected or caused to be inspected the premises where the nuisance is alleged to exist and has satisfied himself that a nuisance does in fact exist.

(2) SUMMARY ABATEMENT. If the inspecting officer determines that a public nuisance exists within the Village and that there is great and immediate danger to the public health, safety, peace, morals or decency, the President may direct the proper officer to cause the same to be abated and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.

(3) ABATEMENT AFTER NOTICE. If the inspecting officer determines that a public nuisance exists on private premises but that such nuisance does not threaten great and immediate danger to the public health, safety, peace, morals or decency, he shall serve notice on the person causing or maintaining the nuisance to remove the same within 10 days. If such

nuisance is not removed within 10 days, the proper officer shall cause the nuisance to be removed as provided in sub. (2).

(4) **OTHER METHODS NOT EXCLUDED.** Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the Village of its officials in accordance with the laws of the State.

(5) **COURT ORDER.** Except when necessary under sub. (2), an officer hereunder shall not use force to obtain access to private property to abate a public nuisance but shall request permission to enter upon private property if such premises are occupied and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.

10.11 **COST OF ABATEMENT.** In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the 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.

10.12 **PENALTY.** Any person who shall violate any provision of this chapter, or any regulation, rule or order made hereunder, or permit or cause a public nuisance shall be subject to a penalty. **See fine schedule.**