

Chapter 70 PUBLIC NUISANCES*

***Cross references:** Health and welfare, ch. 42; solid waste, ch. 78; utilities, ch. 98.

State law references: Nuisances generally, Wis. Stats. § 823.01 et seq.

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ARTICLE I. IN GENERAL

Sec. 70-1. Penalty.

Any person who shall violate any provision of this chapter or permit or cause a public nuisance shall be subject to a penalty as provided in section 1-17.

(Code 1983, § 10.10)

Sec. 70-2. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Public nuisance means a thing, act, occupation, condition or use of property that 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.

"Public nuisance" also means any place or premises within the city where city ordinances or state laws relating to public health, safety, peace or welfare are openly, continuously, repeatedly and intentionally violated.

(Code 1983, §§ 10.02, 10.04(4))

Cross references: Definitions generally, § 1-2.

Sec. 70-3. Public nuisances prohibited.

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

(Code 1983, § 10.01)

Sec. 70-4. Abandoned refrigerators, adoption by reference.

The applicable provisions of Wis. Stats. § 167.25, as it may be amended from time to time, excluding the penalty, is adopted by reference in this section as if fully set forth in full; and a violation of such statute shall constitute a violation of this section punishable as provided in section 1-17.

(Code 1983, § 9.20)

Sec. 70-5. Open cisterns, wells, basements or other dangerous excavations prohibited.

No person shall have or permit on any premises owned or occupied by him any open cisterns, cesspools, wells, unused basements, excavations or other dangerous openings. All such places shall be filled, securely covered or fastened in such manner as to prevent injury to any person; and any cover shall be of a design, size and weight that the same cannot be removed by small children.

(Code 1983, § 9.19)

Sec. 70-6. Enforcement.

The police department, the fire department, the building inspector, and the health

committee 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 shall have inspected or caused to be inspected the premises where the nuisance is alleged to exist and have satisfied himself that a nuisance does in fact exist.

(Code 1983, § 10.08(1))

Sec. 70-7. Summary abatement.

If the inspecting officer shall determine 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 nuisance to be abated and charge the cost to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.

(Code 1983, § 10.08(2))

Sec. 70-8. Abatement after notice.

If the inspecting officer 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 or peace, 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 nuisances to be removed as provided in section 70-7.

(Code 1983, § 10.08(3))

Sec. 70-9. 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.

(Code 1983, § 10.08(4))

Sec. 70-10. Court order.

Except when necessary under section 70-7, no officer shall use force to obtain access to private property to abate a public nuisance but shall request permission to enter upon private property if such premises are occupied, and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.

(Code 1983, § 10.08(5))

Sec. 70-11. 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 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.

(Code 1983, § 10.09)

Sec. 70-12. 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 70-2:

- (1) *Breeding places for vermin, etc.* Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material whatsoever in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed.
- (2) *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.
- (3) *Noxious odors, etc.* Any use of property, substances or things within the city emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, gases, effluvia or stench extremely repulsive to the physical senses of ordinary persons that annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the city.
- (4) *Street pollution.* Any use of property that shall cause any nauseous or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the city.
- (5) *Air pollution.* The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the city limits or within one mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property in the city.

(Code 1983, § 10.03)

Sec. 70-13. 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 70-2:

- (1) *Signs, billboards, etc.* All signs and billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated or constructed as to endanger the public safety.
- (2) *Illegal buildings.* All buildings erected, repaired or altered in violation of the provisions of the ordinances of the city relating to materials and manner of construction of buildings and structures within the city.

- (3) *Unauthorized traffic signs.* All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing that purport to be or may be mistaken as an official traffic control device or railroad sign or signal, or that because of its color, location, brilliance or manner of operation, interferes with the effectiveness of any such device, sign or signal.
- (4) *Obstruction of intersections.* All trees, hedges, billboards or other obstructions that 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) *Tree limbs.* All limbs of trees that project over and less than ten feet above any public sidewalk, street or other public place.
- (6) *Dangerous trees.* All trees that are a menace to public safety or are the cause of substantial annoyance to the general public.
- (7) *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.
- (8) *Wires and cables over streets.* All wires and cables over streets, alleys or public grounds that are strung less than 15 feet above the surface.
- (9) *Noisy animals or fowl.* The keeping or harboring of any animal or fowl that 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 city.
- (10) *Obstructions of streets; excavations.* All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under such locations, except as permitted by the ordinances of the city, or that, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after their purpose has been accomplished, or do not conform to the permit.

(Code 1983, § 10.05)

Sec. 70-14. Radio or television interference prohibited.

No person shall operate any machine or equipment that causes interference with radio or television reception when such interference can be prevented by repairs, adjustments, the installation of corrective appliances or other practicable alterations at a reasonable expense.

(Code 1983, § 9.15)

Secs. 70-15--70-40. Reserved.

ARTICLE II. NUISANCE TREES*

*Cross references: Vegetation, ch. 102.

Sec. 70-41. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Private property means any premises including but not limited to any other than those defined as "public property."

Public nuisance means:

- (1) Trees that are diseased infected.
- (2) Trees that are insect infested.
- (3) Trees or parts that are dead.

Public property means any premises owned or controlled by the city, 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.

(Ord. No. OR93-107, § I(10.06(2)), 11-22-1993)

Cross references: Definitions generally, § 1-2.

Sec. 70-42. Public nuisances declared.

The city council having determined that the health of the urban forest and public safety within the city limits are threatened by the existence of dead or diseased trees, declares the following to be public nuisances:

- (1) Any living or standing tree or part which harbors insects or disease that constitute a threat to the city urban forest.
- (2) Any dead tree or part, including logs, branches, firewood, stumps or other woody material, that may harbor an infection or infestation that constitutes a threat to the city urban forest.
- (3) Any dead tree or dead part of a living tree that constitutes a threat to the public safety by being a falling hazard.

(Ord. No. OR93-107, § I(10.06(1)), 11-22-1993)

Sec. 70-43. Inspection.

- (a) The city forester shall inspect or cause to be inspected at least twice a year all premises and places within the city to determine whether any public nuisance exists on such premises. He shall also inspect or cause the inspection of any tree or part reported or suspected to be infected or infested with an organism detrimental to the health of the urban forest.

- (b) Whenever necessary to determine the existence of an organism that is detrimental to the health of the urban forest in any tree or part, the person inspecting such tree shall remove or cut specimens from the tree or tree part in such a manner as to avoid permanent injury to the tree and deliver such specimens to the city forester, who shall forward them to the state department of agriculture, state DNR, or University of Wisconsin extension for analysis to determine the presence of such nuisances.
- (c) The forester and his agents or employees may enter upon private premises at reasonable times for the purpose of carrying out any provision of this section.

(Ord. No. OR93-107, § I(10.06(3)), 11-22-1993)

Sec. 70-44. Abatement of nuisances; duty of forester.

- (a) The forester shall order, direct, supervise and control the abatement of public nuisances by spraying, removal, burning or other means he determines to be necessary to prevent as fully as possible any damage to the urban forest, and/or any risk to the public.
- (b) Whenever the forester after examination or inspection 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 a manner as to ensure the greatest amount of protection possible.
- (c) When the forester shall determine, with reasonable certainty, that a public nuisance exists upon private premises, he shall immediately serve or cause to be served personally or by registered mail upon the owner of such property, if he can be found, or upon the occupant a written notice of the existence of such nuisance and shall direct that the nuisance be abated within five days after service of such notice. Such notice shall describe the nuisance and the recommended procedure for its abatement and shall further state that unless the owner shall abate the nuisance in the manner specified in the notice, the forester shall cause the abatement at the expense of the property served. If the owner cannot be found, such notice shall be given by publication in a newspaper of general circulation in the city.

(Ord. No. OR93-107, § I(10.06(4)), 11-22-1993)

Sec. 70-45. Spraying.

- (a) Whenever the forester determines that any tree or part is infected, he may cause all trees within a 1,000-foot radius to be sprayed with an effective destroying concentrate for the infection/infestation.
- (b) In order to facilitate the work and minimize the inconvenience to the public of any spraying operations conducted under this section, the forester shall cause to be given advance public notice of such operations by newspaper, radio or television public service announcements, or other effective means and shall also cause the posting of appropriate warning notices in the areas and along the streets where the trees are to be sprayed at least 24 hours in advance of the spraying. When any residue or concentrate from municipal spraying operations can be expected to be deposited on

any public street, the forester shall also notify the chief of police, who shall take all necessary steps to make and enforce temporary parking and traffic regulations on such streets as conditions require. Temporary no parking notices shall be posted in each block of any affected street at least 24 hours in advance of spraying conditions.

- (c) When appropriate warning notices and temporary no parking notices have been given and posted in accordance with subsection (b), the city shall not allow any claim for damages to any vehicle caused by such spraying operations.
- (d) When the trees on private property are to be sprayed, the forester shall notify the owner of such property and proceed in accordance with the requirements of subsection (c).

(Ord. No. OR93-107, § I(10.06(5)), 11-22-1993)

Sec. 70-46. Cost of tree care; special assessments.

- (a) The cost of the abatement of public nuisance or spraying of trees or parts at the direction of the forester if the nuisance tree or part is on public park or grounds shall be borne by the city.
- (b) The cost of abating a public nuisance or the spraying of trees or parts located on private premises or in the public right-of-way when done at the direction and under the supervision of the forester shall be assessed to the property on which the nuisance tree or part is located or which abuts the public right-of-way in which such nuisance tree or part is located, as follows:
 - (1) The forester shall keep account of the costs of such work or spraying and the amount chargeable to each lot or parcel and shall report such charges, description of the lands to which chargeable and the names and addresses of the owners of such lands to the city clerk/treasurer on or before October 1 of each year.
 - (2) The city clerk/treasurer shall mail a 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 seven 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 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 infested, infected or dead tree, wood or part.

(Ord. No. OR93-107, § I(10.06(6)), 11-22-1993)

Sec. 70-47. Prohibited acts.

No person shall:

- (1) Transport any tree wood, bark or material that is infested or infected on public

streets or highways or other public premises without first securing the written permission of the forester.

- (2) Interfere with or prevent any act of the forester or his agents or employees while they are engaged in the performance of duties imposed by this section.
- (3) Refuse to permit the forester or his duly authorized representative to enter upon his premises at reasonable times to exercise the duties imposed by this section.
- (4) Permit any public nuisance to remain on any premises owned or controlled by him when ordered by the forester to abate such nuisance.

(Ord. No. OR93-107, § I(10.06(7)), 11-22-1993)

Secs. 70-48--70-65. Reserved.

ARTICLE III. PROPERTY MAINTENANCE

Sec. 70-66. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words and phrases not otherwise defined in this section shall have the meanings accepted by common use.

Debris means broken concrete, bricks, blocks or other mineral matter; bottles, porcelain and other glass or crockery; boxes; lumber (new or used), posts, sticks or other wood; paper, rags, cardboard, excelsior, rubber, plastic, wire, tin and metal items; discarded household goods or appliances, junk lawn mowers, tar paper, residues from burning or any similar materials, any of which have an adverse effect upon surrounding properties, neighborhood or city property values, health, safety or general welfare.

Junk means worn out or discarded material of little or no value including, but not limited to, household appliances or parts thereof, machinery and equipment or parts thereof, vehicles or parts thereof, inoperable or unregistered motor vehicles, tools, discarded building materials, or any other unsightly material, the accumulation of which has an adverse effect upon surrounding properties, neighborhood or city property values, health, safety or general welfare.

Rubbish means combustible and noncombustible waste materials, including the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tin cans, metals, mineral matter, glass crockery and dust, and other similar materials. This definition does not include recyclables or garbage properly disposed of in approved containers.

Cross references: Definitions generally, § 1-2.

Sec. 70-67. Regulations.

All exterior areas of any premises shall be kept in a clean and sanitary condition. No person or entity shall accumulate, store or allow any debris, junk or rubbish outside of any building on any real estate located in the city.

Sec. 70-68. Powers and duties of building inspector.

The building inspector and the police shall both have authority to enforce the provisions of this article and either may make inspections in response to a complaint that an alleged violation of this article exists; or when there is good reason to believe that a violation is being committed. The building inspector and the police shall both have the authority to cause a citation to be issued to the property owner and/or the occupant of the property upon which such debris, junk or rubbish is located.

Sec. 70-69. Penalties.

Penalty for violation of this article shall be as provided in section 1-17.