

City of Sun Prairie, Wisconsin

**AN ORDINANCE REPEALING AND
RECREATING SECTION 8.44 -
PUBLIC NUISANCES**

Presented: February 20, 2007

Adopted: February 20, 2007

Publication: March 1, 2007

File Number: 10,344

Ordinance No.: #303

ORDINANCE

The Common Council of the City of Sun Prairie, Dane County, Wisconsin, hereby ordains as follows:

SECTION 1. That Section 8.44 is hereby amended as follows: (Additions are noted by underline, deletions are noted by ~~overstrike~~.)

Section 8.44.010 Public nuisances prohibited.

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

8.44.020 Public nuisance defined.

A public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as to:

- 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.
- E. Any thing, act, occupation, condition or use of property which has been defined by the Wisconsin Statutes as a public nuisance is a public nuisance under this Chapter.
- F. Any violation of the Sun Prairie Municipal Code that is not corrected within a reasonable time after notice from the City to a responsible party is a public nuisance.

(Prior code § 11-7-2)

8.44.030 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 8.44.020.

- A. Adulterated Food. All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.
- B. Unburied Carcasses. Carcasses of animals, birds or fowl not intended for human consumption or foods which are not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death.
- C. 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.
- D. Stagnant Water. All stagnant water in which mosquitoes, flies or other insects can multiply.
- E. Garbage Cans. Privy vaults and garbage cans which are not fly-tight.
- F. Noxious Weeds. All noxious weeds and other rank growth of vegetation.

G. 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.

H. Noxious Odors, ~~etc.~~ Any use of property, substances or things within the city or within four miles thereof ~~emitting~~ or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, gases, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the city.

I. Street Pollution. Any use of property which shall cause any nauseous or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the city.

J. Animals at Large. All animals running at large.

K. Accumulations of Refuse. Accumulations of old cans, lumber, elm firewood and other refuse.

L. Air Pollution. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or 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~~ sensitiveness or to threaten or cause substantial injury to property in the City.

M. Noise. Loud and unnecessary noise.

N. 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.

(Prior code § 11-7-3)

8.44.040 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 8.44.020.

A. 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.

B. Gambling Devices. All gambling devices and slot machines.

C. 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.

D. 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.

E. Illegal Drinking. Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of the laws of the state of Wisconsin or ordinances of the city. (Prior code § 11-7-4)

8.44.050 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 8.44.020.

A. 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.

B. Illegal Buildings. All buildings and structures erected, repaired or altered within the city 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.

C. 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 an official traffic control device, railroad sign or signal or which because of its color, location, brilliance or manner of operation interferes with the effectiveness of any such device, sign or signal.

D. 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.

E. Tree Limbs. All limbs of trees which project over a public sidewalk less than ten (10) feet above the surface thereof and all limbs which project over a public street less than fourteen (14) feet above the surface thereof.

F. Dangerous Trees. All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.

G. Fireworks. All use or display of fireworks, except as provided by the laws of the state of Wisconsin and ordinances of the city.

H. 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.

I. Wires Over Streets. All wires over streets, alleys, or public grounds which are strung less than fifteen (15) feet above the surface thereof.

J. 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 shall greatly annoy or disturb a neighborhood or any considerable number of persons within the city.

K. 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 city or which, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished, or do not conform to the permit.

L. Open Excavations. All open and unguarded pits, wells, excavations or unused basements freely accessible from any public street, alley or sidewalk.

M. Abandoned Refrigerators. All abandoned refrigerators or iceboxes from which the doors and other covers have not been removed or which are not equipped with a device for opening from the inside.

N. Flammable Liquids. Repeated or continuous violations of the ordinances of the city or laws of the state relating to the storage of flammable liquids.

O. Unremoved Snow. All snow and ice not removed or sprinkled with ashes, sawdust, sand or other chemical removers, as provided in this code.

P. Loud and Unnecessary Noises. All loud, discordant and unnecessary noises or vibrations of any kind.

Q. Unlawful Use of Property. 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 crowds or people to gather, thereby obstructing traffic and free use of the streets or sidewalks.

R. Explicit Movies. All exhibitions within the city of a motion picture, show or other presentation at an outdoor drive-in theater or vehicle video system which motion picture, show or other presentation in whole or in part depicts nudity, sexual conduct or sado-masochistic abuse, as defined in §944.25, Wis. Stats., in such a manner that the material is visible from any public street, sidewalk, thoroughfare or other public place where it may be observed by minors or unconsenting adults and which, due to its content, creates traffic and parking problems on city streets. For the purposes of this section, a motion picture rating "X" by the film industry shall be prima facie evidence that the film in whole or in part depicts nudity, sexual conduct or sado-masochistic abuse and is, therefore, in violation of this chapter.

S. Visual Nuisance. All use or maintenance of building exteriors or surrounding premises which limits the use or enjoyment of neighboring property or which causes or tends to cause diminution of the value of property of others in the neighborhood in which such premises is located by reason of:

1. Exterior storage of scrap lumber, junk, trash or other debris, including, without limitation of enumeration, discarded objects or equipment such as motor vehicles, furniture, appliances, farm or manufacturing equipment, building materials or litter as defined in Chapter 8.20, Sun Prairie Municipal Code.

2. Exterior patchwork, repair or reconstruction that results in a multi-textured or multi-colored effect or appearance not consonant with the décor, architectural design or aesthetics of the rest of such building.

T. Improper Removal of Snow. Any placement or diverting of any unreasonable amount of snow or ice onto the property of another which is so situated as to endanger the public health or safety or creates an unnecessary physical or financial burden.

(Prior code § 11-7-5)

8.44.060 Abatement of public nuisances.

A. Enforcement. The chief of police, the chief of the fire department, the director of public works and the building inspector 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 shall have inspected or caused to be inspected the premises where the nuisance is alleged to exist and has satisfied himself or herself that a nuisance does in fact exist.

B. Summary Abatement. ~~If the an inspecting officer shall 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, upon the recommendation of the appropriate department head, 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.~~ notice to abate the nuisance may be issued and served by the officer pursuant to Section 844.060(E), Sun Prairie Municipal Code. The notice shall order abatement of the nuisance within a period not less than twenty-four (24) hours or greater than seven (7) calendar days and shall state that unless the nuisance is so abated, the city will cause the same to be

abated and will charge the cost thereof to the owner, occupant or person causing, maintaining or permitting the nuisance; and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

C. Nonsummary Abatement. If an inspecting officer determines that a public nuisance exists but that the nature of such nuisance is not such as to threaten imminent danger to the public health, safety, peace, morals or decency, notice to abate the nuisance may be issued and served by the officer pursuant to Section 844.060(E), Sun Prairie Municipal Code. The notice shall order abatement of the nuisance within a period not less than ten (10) calendar days and shall state that unless the nuisance is so abated, the city will cause the same to be abated and will charge the cost thereof to the owner, occupant or person causing, maintaining or permitting the nuisance; and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

D. Abatement Plan. If an inspecting officer determines that a public nuisance exists but that the nature of such nuisance is not such as to threaten imminent danger to the public health, safety, peace, morals or decency, the officer may order the owner, occupant or person causing, maintaining or permitting the nuisance to appear for a hearing to discuss abatement of the nuisance. The hearing shall include the officer and the City Attorney. Notice of the hearing shall be issued and served by the officer pursuant to Section 8.44.060(E), Sun Prairie Municipal Code. The parties may formulate an abatement plan which indicates the measures to be taken by the owner, occupant or person causing, maintaining or permitting the nuisance to abate the nuisance.

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

F. Remedy from Abatement Order. Any person affected by an order under Section 8.44.070(B) or 8.44.070(C), Sun Prairie Municipal Code, shall prior to the abatement date, apply to the circuit court for an order restraining the city from entering on the premises and abating or removing the nuisance, or be forever barred.

~~C. 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, peace, morals or decency, he or she shall serve notice on the person causing or maintaining the nuisance to remove the same within ten (10) days. If such nuisance is not removed within such ten (10) days, the proper officer shall cause the nuisance to be removed as provided in subsection B of this section.~~

~~D. G. 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 of Wisconsin. (Prior code § 11-7-6)~~

8.44.070 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, such cost shall be assessed against the real estate as a special charge. (Prior code § 11-7-7)

8.44.080 Non-abatement prohibited.

A. Failure to Comply with Order to Abate. No person shall fail to comply with a lawful order to abate a public nuisance issued pursuant to this section. Each day a non-compliance with a lawful order to abate issued pursuant to this section is a separate violation.

B. Failure to Appear for Hearing. No person shall fail to comply with an order to appear for an abatement hearing pursuant to Section 8.44.060(D), Sun Prairie Municipal Code.

C. Failure to Observe Abatement Plan. No person shall fail to comply with the terms of an abatement plan.

8.44.090 Abatement by court action.

If an officer determines that a public nuisance exists, the officer may refer the nuisance to the City Attorney for review. If the City Attorney determines that alternative enforcement methods have failed to abate the nuisance or would be ineffective in doing so, the City Attorney may cause an action to abate such nuisance to be commenced in the name of the City in the Circuit Court of Dane County in accordance with the provisions of the Wisconsin Statutes.

8.44.100 Enforcement.

For the purposes of this Chapter, "officer" shall mean the Chief of Police, the Fire Chief, the Building Inspector and their designees. These officers shall enforce the provisions of this chapter that come within the jurisdiction of their

offices; and they shall make period inspections and inspections upon complaint to insure that such provisions are not violated. No action shall be taken under Section 8.44.060(B) or 8.44.060(C), Sun Prairie Municipal Code, 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 is satisfied that a nuisance does in fact exist.

8.44.110 Chronic nuisance premises.

- A. Definitions. The following terms shall be defined as follows in this subchapter.
1. Chief. The Chief of Police or his or her designee.
 2. Enforcement Action. Arrest, the issuance of a citation or the issuance of a verbal or written warning.
 3. Nuisance Activity. Any of the following activities, behaviors or conduct occurring on a premises:
 - a. An act of Harassment, as defined in §947.013, Wis. Stats.
 - b. Disorderly Conduct, as defined in §947.01, Wis. Stats.
 - c. Battery. Substantial Battery or Aggravated Battery, as defined in §940.19, Wis. Stats.
 - d. Lewd and Lascivious Behavior, as defined in §944.20, Wis. Stats.
 - e. Prostitution, as defined in §944.30, Wis. Stats.
 - f. Theft, as defined in §943.20, Wis. Stats.
 - g. Receiving Stolen Property, as defined in §943.34, Wis. Stats.
 - h. Arson, as defined in §943.02, Wis. Stats.
 - i. Possession, Manufacture or Delivery of a Controlled Substance or related offenses, as defined in §961, Wis. Stats.
 - j. Gambling, as defined in §945.02, Wis. Stats.
 - k. Animal violations, as defined in §6.04, Sun Prairie Municipal Code.
 - l. Trespassing, as defined in §943.13 and §943.14, Wis. Stats.
 - m. Weapons violations, as defined in Chapter 9.32, Sun Prairie Municipal Code.
 - n. Noise violations, as defined in Chapter 8.32, Sun Prairie Municipal Code.
 - o. Any conspiracy to commit, as defined in §939.31, Wis. Stats., or attempt to commit, as defined in §939.32, Wis. Stats., any of the activities, behaviors or conduct enumerated in subdivisions 3.a. through n. above.
 4. Owner. The owner of the premises or his or her agents.
 5. Premises. An individual dwelling unit or an individual business premises and areas associated with such unit or premises.
- B. Notice. Whenever the Chief determines that three or more nuisance activities resulting in enforcement action have occurred at a premises on separate days during a 30-day period, the Chief may notify the premises owner in writing. In reaching this determination, the Chief shall not count nuisance activities that were reported by the owner of the premises. The notice shall contain the street address or legal description sufficient to identify the premises, a description of the nuisance activities that have occurred at the premises, a statement indicating that the cost of future enforcement may be assessed as a special charge against the premises and a notice as to the appeal rights of the owner. The notice shall be delivered pursuant to Section 8.44.060(E), Sun Prairie Municipal Code.
- C. Additional Nuisance Activity. Whenever the Chief determines that additional nuisance activity has occurred at a premises for which notice has been issued pursuant to Section 8.44.110(B), Sun Prairie Municipal Code, that this nuisance activity has occurred not less than fifteen (15) days nor more than one hundred eighty (180) days after notice has been issued, and that reasonable efforts have been made to abate the nuisance activity, the Chief may calculate the cost of police response and enforcement for this and any subsequent nuisance activities and cause such charges and administrative costs to be assessed and collected as a special charge.
- D. Appeal. Appeal of the determination of the Chief of Police pursuant to either Section 8.44.110(A) or 8.44.110(B), Sun Prairie Municipal Code, may be submitted to the Committee of the Whole. Chapter 68, Wisconsin Statutes, shall not apply to such an appeal.

8.44.120 Penalties.

- A. First Offense. Any person who shall violate any provision of this chapter or any regulation, rule or order made hereunder shall forfeit not less than \$1 nor more than \$1,000.
- B. Subsequent Offenses. Any person who shall violate any provision of this chapter or any regulation, rule or order made hereunder within twenty four (24) months after committing a previous violation of this chapter shall forfeit not less than \$200 nor more than \$2,000.

SECTION 2. Effective Date. This Ordinance shall become effective upon passage and publication as provided by law.

APPROVED: _____
Joe Chase, Mayor

Date Approved: February 20, 2007

This is to certify that the foregoing Ordinance was adopted by the Common Council of the City of Sun Prairie at a meeting held on the 20th day of February 2007.

Diane J. Hermann-Brown, City Clerk