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Mequon, WI 53092
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www.ci.mequon.wi.us

Office of the City Administrator

PUBLIC WELFARE COMMITTEE

Tuesday, February 14, 2023

5:15 PM

Lower Conference Room

Agenda

I) Call to Order

II) Approval of Meeting Minutes

Action requested: review and approve

1. January Minutes

III) Ordinances

Action requested: review and recommend approval

1. **ORDINANCE 2023-1639** An Ordinance Amending Chapter 50 and Section 46-133 of the Mequon Municipal Code, Relating to Nuisances Within the City Including Noise
2. An Ordinance Amending Section 10-26 of the Mequon Code of Ordinances Related to Residential Swimming Pools Standards

IV) Resolutions

Action requested: review and recommend approval

1. **RESOLUTION 4012** A Resolution Authorizing Renewal of an Application with Bird City Wisconsin and Observing World Migratory Bird Day in Conjunction with Arbor Day
2. **RESOLUTION 4011** A Resolution Designating Mequon, Wisconsin as a Bee City USA

V) Work Calendar

VI) Adjourn

Dated: February 14, 2023

/s/ Dale Mayr, Chair

.....
Notice is hereby given that a quorum of other governmental bodies may be present at this meeting to present, discuss and/or gather information about a subject over which they have decision-making responsibility, although they will not take formal action thereto at this meeting.

Persons with disabilities requiring accommodations for attendance at this meeting should contact the City Clerk's Office at 262-236-2914, twenty-four (24) hours in advance of the meeting.

Any questions regarding this agenda may be directed to the City Administrator's Office at 262-236-2941, Monday through Friday, 8:00 AM – 4:30 PM



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Office of the City Administrator

PUBLIC WELFARE COMMITTEE

Tuesday, January 10, 2023

6:00 PM

Lower Conference Room

Minutes

1) Call to Order, Roll Call

Present:

Chair Dale Mayr
Alderman Mark Gierl
Alderman Kathleen Schneider

Also Present: Assistant City Administrator Schoenemann, Assistant Community Development Director Zader, City Attorney Sajdak, Parks Superintendent Gies, Resident Barb Hunt, and Executive Assistant Enea

2) Approval of Meeting Minutes

a. December Meeting Minutes

RESULT: **Approved by Voice Acclamation [Unanimous]**

MOVED BY: Alderman Schneider

SECONDED BY: Alderman Gierl

AYES: Mayr, Gierl, Schneider

3) Ordinances

Action requested: review and recommend approval

a. **ORDINANCE 2023-1639** An Ordinance Amending Chapter 50 and Section 46-133 of the Mequon Municipal Code, Relating to Nuisances Within the City Including Noise

Alderwoman Schneider found the amendments to be redundant and thought they still needed to be more clear. There was also a discussion about when an acceptable time was to mow the lawn at a golf course. It was requested for City Attorney Sajdak to tighten up some of the ambiguity and also to eliminate Section 46.1.3 and create a special noise section. Alderman Gierl reported that a resident was complaining about game noise at Concordia. Assistant Community Director Zader explained how the City Enforcement Officer will go there and take a crowd noise reading each year. The Committee thought it should be done at least

Attachment: PW Mins 011023 (8165 : January Minutes)

twice a year, Early in May and again in July. Also, since there are new Chinooks owners, reissue rules and regulations.

RESULT: Tabled [Unanimous]

MOVED BY: Alderman Schneider

SECONDED BY: Alderman Gierl

AYES: Mayr, Gierl, Schneider

4) Discussion Items

a. No Mow May

Parks Superintendent Gies recommended that providing public information about planting pollinated gardens during April/May would be his recommendation. Grass does not grow over 8 inches in May, so there was no need for enforcement if anyone did participate in No Mow May. Resident Barb Hunt was at the meeting and said she participated in No Mow May last year. She contacted both her neighbors to make them aware of her participation and both were fine with it. The Committee recommended adding one sentence to the existing ordinance saying the height of turf grass would not be enforced until after June 1.

b. Discussion regarding changes to the required front setback in the R-2 Zoning District.

Assistant Community Development Director Zader spoke about how the resident in the R-2 Zoning District wanted additional solar panels and was denied because of the required 75 foot setback.. Zader recommended for that district to match other districts depending on type of road they are on. Alderwoman Schneider moved for the off-set of the R-2 Zoning District to match other districts and to move the setback from 30 to 25 as well.

RESULT: Approved as Amended [Unanimous]

MOVED BY: Alderman Schneider

SECONDED BY: Alderman Gierl

AYES: Mayr, Gierl, Schneider

5) Work Calendar

1. Nuisance
2. Irrigation

6) Adjourn

Alderman Gierl moved to adjourn at 6:45pm and Alderwoman Schneider seconded.

Respectfully Submitted,

Carrie Enea
Executive Assistant



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Office of City Attorney

TO: Public Welfare Committee
FROM: Brian Sajdak, City Attorney
DATE: January 10, 2023
SUBJECT: ORDINANCE 2023-1639 An Ordinance Amending Chapter 50 and Section 46-133 of the Mequon Municipal Code, Relating to Nuisances Within the City Including Noise

February Update

At the January Public Welfare Committee meeting, discussion centered around concerns that the ordinance as presented still presented a confusing approach to the restrictions. Based on feedback provided, the draft presented for consideration this month accomplishes two things:

First, it places all of the noise regulations within Section 46-133. In addition to placing them all within the same code section, the draft also clarifies the various exceptions or modifications to the general noise rules that have been discussed during the course of the Committee's consideration of this ordinance.

Second, within Chapter 50 the specific noise regulations have been removed (and placed in 46-133). In its place, Chapter 50 now provides that repeated or continual violations of 46-133 constitutes a nuisance. Under this approach, singular, one-of type violations would be a violation of section 46-133 and could be addressed by a citation. Repeated or continual violations could be escalated to a nuisance and addressed in circuit court.

Background

Recently, the Public Welfare Committee asked to review the City's nuisance ordinance for potential amendments on particular issues, such as nuisance animals. From staff's perspective, the review was also warranted based on experience and comments from prior mayors concerning the somewhat byzantine process for achieving nuisance abatement that is currently contained in the City Code. Under the current Code, nuisances are addressed in two separate sections. The first, consisting of sections 50-1 through 50-4, defines what constitutes a nuisance. The second, consisting of the remainder of the Code, covers the process for abating a nuisance.

Discussion

Of the two topics, the first is the area with little need for suggested changes. The various activities and conditions defined to be nuisances is fairly comprehensive and similar to most other communities. Nevertheless, the Public Welfare Committee identified three potential amendments. First, the proposed revisions include the addition of barking dogs (and similar animal noises), and repeated violations of the Municipal Code, as specifically enumerated

nuisances. The second of these additions results in consistent treatment by all departments where they are continually addressing the same violation/offender. Finally, the hours related to noise violations for construction and recreational vehicles has been amended to ensure consistency throughout the Code. This includes proposed changes to Section 46-133.

The second topic - that of abating any identified nuisance - is more complicated. Under the current Code, a nuisance complaint that has been received must first be inspected by the Health Officer or the Police Chief, who then prepares a written report of findings. If a nuisance exists, the report gets filed with the Mayor, who then submits it to the City Clerk for a subsequent hearing before the Common Council. Thereafter, the Common Council may order the abatement of the identified nuisance.

Obviously, there are a few problems with this approach. First, the inspecting officer often does not make sense - the City no longer employs a health officer, and the Police Department lacks the experience and training to address many potential nuisances (like building code violations). Second, in many cases, nuisance properties often have history with the various departments. In these cases, orders to correct and municipal citations have been utilized but have failed to bring about compliance. Based on that, it is foolish to believe that a new investigation and an appearance before the Common Council will suddenly make a non-cooperating property owner cooperative. For these reasons, this section of the Code has been amended to streamline the abatement process, and to ensure that the appropriate City officials are involved.

Accordingly, proposed amendments to address all of these identified concerns have been drafted, are endorsed by the Public Welfare Committee and are contained in the proposed ordinance that is recommended for adoption. Given the extent of the amendments that are contained within Chapter 50 within the attached ordinance, a clean copy of Chapter 50 that reflects all of the recommended amendments is also attached for reference.

Recommendation

A recommendation is forthcoming from the Public Welfare Committee on January 10, 2023.

Attachments:

Chapter 50 - Clean (PDF)

COMMON COUNCIL
OF THE
CITY OF MEQUON

ORDINANCE 2023-1639

An Ordinance Amending Chapter 50 and Section 46-133 of the Mequon Municipal Code,
Relating to Nuisances Within the City Including Noise

RECITALS

- A. The Common Council previously adopted Chapter 50 of the Mequon Municipal Code which regulates nuisances within the City.
- B. Loud and excessive noise is among the nuisances regulated in Chapter 50.
- C. The Common Council desires to amend Chapter 50 to provide additional clarity and to streamline the enforcement process.
- D. In order to provide consistency in noise regulations, the Common Council also desires to amend Section 46-133, which regulates certain construction noises.
- E. The regulation of nuisances within the City furthers the health, safety and welfare of the community.

BASED UPON THE FOREGOING RECITALS, the Common Council of the City of Mequon, Wisconsin, do ordain as follows:

SECTION I

Section 46-133 of the Mequon Municipal Code is repealed and recreated to read as follows:

Sec. 46-133. Loud noise prohibited.

(a) *In general.* Except as may be provided for otherwise in this section, no person shall make, continue, or cause to be made any loud, discordant, disturbing or unnecessary sounds or noises and/or annoying vibrations emanating from or in the proximity to a premises by persons associated with that premises, such as horns, whistles, music amplification equipment, public address systems, which would tend to annoy or disturb a person of ordinary sensibilities in the proximity of the premises.

(b) *Construction noise.* Reasonable and ordinary noises related to construction, excavation, demolition, alteration, or repair of any building or

development shall be exempt from the provisions of this section except that no person shall at any time between the hours of 9:00 p.m. and 7:00 a.m. on Monday through Friday, and 10:00 p.m. and 8:00 a.m. on Saturday, Sunday and public holidays create, as associated with any such construction activities, any loud or sharp noises, concussions or disturbing sounds that may tend to annoy or disturb a person of ordinary sensibilities. For purposes of enforcement of this article, public holidays shall include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, and the day of the week shall be based upon the day on which the time period ends (e.g., from 10:00 p.m. Friday night to 8:00 a.m. Saturday morning shall be deemed a Saturday).

(c) *Outdoor power equipment.* No person shall operate any gas-powered outdoor power equipment such as lawn mowers, saws, hedge clippers, leaf blowers, snow removal equipment, and the like between the hours of 10:00 p.m. and 7 a.m. except that snow removal equipment may be operated at any time during the pendency of an official snow emergency and at any time within 24 hours following a snowfall of two inches or greater.

(d) *Determining violations.* In determining whether a noise constitutes a violation under this section, the following characteristics and conditions should be considered when assessing whether the noise would tend to annoy or disturb a person of ordinary sensibilities:

- (1) The time of day when the noise occurs.
- (2) The duration of the noise.
- (3) The frequency or pitch of the noise.
- (4) The proximity of the noise to a structure in which sleeping may occur.
- (5) The use, nature, and zoning of the property from which a noise emanates and the property where it is perceived.
- (6) The number of people and their activities that are affected or are likely to be affected by the noise.
- (7) The level of the noise in comparison to the level of ambient noise.

(e) *Approved or permitted noises.* Noises ordinarily associated with an approved use of property, or those noises which are expressly authorized by a permit, authorization or approval from a duly authorized governmental entity shall be exempt from these provisions.

(f) *Other exempted noises.* Noises associated with public works, agricultural and emergency operations shall be exempt from these provisions.

SECTION II

Chapter 50 of the Mequon Municipal Code is amended to read as follows (NOTE: Deleted text is ~~struck through~~; Amended text is underlined):

Sec. 50-1. Public nuisance defined and prohibited.

- (a) A public nuisance is a thing, act, occupation or use of property, which shall repeatedly occur or continue for a sufficient length of time so as to:
- (1) Injure or endanger the safety, health, comfort or repose of the public;
 - (2) Offends public morals or decency;
 - (3) Unlawfully interfere with, obstruct, or tend to obstruct or render dangerous for passage a lake, navigable river, bay, stream, canal or basin or a public park, square, street, alley or highway;
 - (4) In any way render the public insecure in life or in the use of property;
 - (5) Generate three or more calls for police service for nuisance activities which occur at a premises, within a calendar year, in accordance with section 50-6 below.
- (b) In all cases where no provision is herein made defining what are nuisances and how the same may be removed, abated, or pre-vented, in addition to what may be declared herein, those offenses which are known to the common law of the land and the Wisconsin Statutes as nuisances, may, in case the same exist within the city limits, be treated as such offenses and proceeded against as provided in this section or in accordance with other provisions of law.
- (c) No person shall within the city, cause or create a public nuisance or permit a public nuisance to remain on premises owned or occupied by him.

Sec. 50-2. Public nuisances affecting health.

- (a) No person shall within the City of Mequon, cause or create any public health nuisance or permit any public health nuisance to remain on premises owned or occupied by him.
- (b) The following are hereby specifically declared to be nuisances affecting the public health:
- (1) All decayed, spoiled, tainted, unwholesome or harmfully adulterated food, drink or drugs offered for sale to the public;
 - (2) All ponds or pools of stagnant water in which mosquitoes, flies or other insects can multiply;
 - (3) Carcasses of animals or fowl not buried, destroyed or otherwise disposed of in a sanitary manner within 24 hours after death;
 - (4) Accumulations of decayed animal or vegetable matter, trash, manure, rubbish, rotting lumber or other debris to which are attracted flies, mosquitoes, insects, rats or other vermin;

- (5) Privy vaults and garbage cans which are not fly tight;
- (6) Pollution of any public well or cistern, stream, lake, canal or body of water by sewage, creamery or industrial waste or other substances;
- (7) All noxious weeds as follows: Canada thistle, leafy spurge, field bindweed (creeping Jenny), and burdock, poison ivy, common ragweed and giant ragweed;
- (8) Dense smoke, noxious fumes, gas, soot, cinders, fly ash or industrial dust in such quantities as to render the occupancy of property dangerous or uncomfortable to a person of ordinary sensibilities;
- (9) Any dilapidated structure or building which harbors or is infested with vermin or rodents.
- (10) The presence of wastewater or sewage effluent from buildings on the ground surface, backing up into the building and/or running into a surface water body, caused by a damaged, malfunctioning, improperly constructed or inadequately maintained private sewage system or private sewage lateral; also, any wastewater or sewage effluent that is not handled and disposed of in compliance with all applicable county and state codes.

Sec. 50-3. Public nuisances affecting morals and decency.

- (a) No person shall within the City of Mequon, cause or create a public morals or decency nuisance or permit such nuisance to remain on premises owned or occupied by him.
- (b) The following are hereby specifically declared to be public nuisances offending public morals and decency:
 - (1) All gambling devices, slot machines and punch boards, except as approved by the state;
 - (2) All houses kept for the purpose of prostitution or gambling.

Sec. 50-4. Public nuisances affecting peace and safety.

- (a) No person shall within the City of Mequon, cause or create a public peace or safety nuisance or permit such nuisance to remain on premises owned or occupied by him.
- (b) The following are specifically declared to be nuisances disturbing the public peace or endangering the public safety:
 - (1) All trees, hedges, billboards of other obstructions which prevent persons driving automobiles or other vehicles on the city streets from having a clear view of traffic approaching an intersection from cross streets;
 - (2) ~~All loud, discordant or unnecessary noises and annoying vibrations~~
Repeated or continuing violations of sec. 46-133;
 - (3) All open or unguarded wells, cisterns, pools or excavations so

located as to endanger public safety or the safety of children;

(4) All buildings, walls and other structures, which have been damaged by fire, decay or otherwise to an extent exceeding one-half their assessed value;

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

(6) All unauthorized signs, signals, markings or devices which purport to be or may be mistaken as an official traffic control device placed or maintained upon or in view of any public highway, street, alley or railway crossing;

(7) All hanging signs, awnings and other similar structures over the streets, alleys or public ways of the city or projecting more than six feet over the sidewalks or so situated or constructed as to endanger the public safety;

(8) All tree limbs which are less than ten feet above the surface of any public sidewalk or 14 feet above the surface of any street;

(9) All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;

(10) The allowing of rain water, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk.

(11) Keeping, harboring or maintaining any domestic pet which howls, barks, screeches, whines, cries or similar sounds which may be heard beyond the boundary of the property of the owner, keeper or harborer so as to materially interfere with or affect the health, comfort, peace and quiet of the public, or the reasonable use and enjoyment of the neighboring residential properties where the animal sounds are shown to have occurred either as an episode of continuous noise lasting for a minimum period of fifteen (15) minutes, or repeated episodes of intermittent noise lasting for a minimum period of thirty (30) minutes. It shall be an affirmative defense under this division that the animal was intentionally provoked by a party other than the owner to make such noise.

Sec. 50-5. Abatement of nuisances.

(a) ~~*Inspection of premises.* Whenever complaint is made to the mayor by a private citizen or any official or employee of the city that a public nuisance exists within the City of Mequon, the mayor, official or employee shall promptly notify the health officer and the chief of police who shall inspect or cause to be inspected the premises upon which such nuisance is alleged to exist and shall make a written report of their findings to the mayor.~~ *Enforcement.* The chief of police, the chief of the Southern Ozaukee Fire and Emergency Medical Services Department, director of the community development department, city engineer, and the building inspector shall have the power and authority to 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 appropriate official shall have inspected or caused to be inspected the premises where the nuisance is alleged to exist and has been satisfied that a nuisance does in fact exist.

(b) *Summary abatement procedure.*

(1) ~~Notice to owner or occupant.~~ If the inspecting official shall determine that a public nuisance exists ~~on private property within the city~~ and that there is great and immediate danger to the public health, safety, morals, decency or peace, the mayor shall direct the chief of police to serve notice on the person causing, permitting or maintaining such nuisance or upon the owner or upon the occupant of the premises where such nuisance is caused, permitted or maintained, and, if the owner is a non-resident or cannot be found, ~~and to~~ post a copy of said notice on the premises. Such notice shall direct the person causing, permitting or maintaining such nuisance or the owner or occupant, as the case may be, to abate or remove such nuisance within a reasonable time of not less than 24 hours and shall state that unless such nuisance is so abated, the city will cause the same to be abated and will charge the cost thereof to the person causing, permitting or maintaining the nuisance, owner or occupant as the case may be.

(2) ~~Failure of owner or occupant to abate nuisance~~ *Abatement by city.* ~~If the owner or occupant fails to comply with the aforesaid notice within the time limited or if he cannot be found, the health officer, in the case of health nuisances, and the chief of police in all other cases shall cause the abatement or removal of such public nuisance. If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the inspecting official shall cause the abatement or removal of such public nuisance.~~

(c) *Abatement in other cases.* If the inspecting official shall determine that a public nuisance exists within the city, but that the nature of such nuisance does not threaten great and immediate danger to the public health, safety, peace, morals, decency or peace, the mayor shall direct the inspecting official to serve notice on the person causing, permitting or maintaining such nuisance or upon the owner or occupant of the premises where such nuisance is caused, permitted or maintained, and, if the owner is a non-resident or cannot be found, to post a copy of said notice on the premises. Such notice shall direct the person causing, permitting or maintaining such nuisance or the owner or occupant, as the case may be, to abate or remove such nuisance within a reasonable time of not less than 10 days. If such nuisance is not abated or removed within 10 days, the inspecting official shall report such fact to the mayor, who may direct the city attorney to commence an action in circuit court for the abatement of the nuisance.

(1) ~~Notice to owner or occupant.~~ If the inspecting official 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, morals, decency or peace, they shall file written reports of their findings with the mayor, who shall forthwith direct the city clerk to issue a notice to the owner or occupant of the premises requiring him to appear before the common council at a regular or special meeting thereof on the day and time appointed by the mayor and then and there show cause, if any there be, why said nuisance should not be abated and removed at the cost and expense of the owner or occupant, as the case may be. A copy of said notice shall be served upon the owner or occupant of said premises by the chief of police at least ten days prior to the date set for hearing, or if the owner of the premises is a non-resident or cannot be found, a copy of such notice shall be published in the official newspaper and a like copy mailed to the owner directed to his last known address as shown by the records of the city treasurer at least 15 days before the date set for hearing.~~

~~(2) — *Hearing.* At the time set for hearing the common council shall hear testimony relative to the facts and shall enter written findings thereon. If the council shall find that the public nuisance exists on said premises or is kept or maintained or allowed by the owner or occupant, it shall order the owner or occupant, as the case may be, to abate the same.~~

~~(3) — *Failure of owner or occupant to abate.* In the event that the owner or occupant shall fail to comply with the order of abatement of the common council, the council shall, without further notice, order the chief of police to comply therewith and to make return of the cost and expense of abating or removing such nuisance to the city treasurer.~~

(d) *Cost of abating nuisance.* In addition to any other penalty imposed under this chapter for the maintenance of a nuisance, the cost of abating or removing a nuisance by the city shall be collected from the owner or occupant or person causing, permitting or maintaining said nuisance or, if notice to abate such nuisance has been given to the owner, such costs may be charged against the premises and assessed against the real estate as another special taxes charge.

(e) *Remedies not exclusive.* ~~In addition to the methods of abatement of public nuisances specified in this section, the mayor or common council may also institute an action in the Ozaukee County circuit court for abatement of any public nuisance existing within the limits of the City of Mequon in accordance with the provisions of Wis. Stats. ch. 823. 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, nor as prohibiting an action to be commenced in the circuit court seeking a forfeiture as provided in section 1-7 of this Code.~~

Sec. 50-6. Chronic nuisances premises.

(a) *Findings.* The city council finds that any premises that generates three or more responses in a one year period by the police department for nuisance activities as defined in subsection (b) below, has received more than the appropriate level of general and adequate city service and has placed an undue

and inappropriate burden on the taxpayers of the city. The common council therefore authorizes the chief of police, as provided in this chapter, to require the premises owner or occupant to comply with nuisance abatement plans and to charge the owner or occupant of such premises the costs associated with abating the violations at the premises where nuisance activities chronically occur as set forth in section 50-9.

(b) *Definitions.* The following terms shall be defined as follows in this article, and the singular includes the plural and the plural includes the singular:

Chief means the chief of police or his or her designee.

Owner means a person who has legal title or possession, charge, care or control of premises, including as executor, administrator, trustee, or guardian of the estate of a person or property.

Person includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, limited liability company or any other legal entity.

Person associated with premises means the premises owner, operator, manager, resident, occupant, guest, visitor, or person present on the premises (other than trespasser) or employee or agent of any of the above persons associated with the premises.

Police department response means a sworn, on-duty city police officer is dispatched to a premises in response to a good faith report of nuisance activity, as defined below, occurring or having occurred at the premises, which complaint said officer finds to be credibly supported during his/her investigation, and which results in an arrest, or the issuance of a citation, or a criminal or juvenile complaint.

Premises means an individual building, dwelling, or dwelling unit and associated common areas or vacant land.

Nuisance activity means any of the following activities, behaviors, or conduct whenever engaged in by persons associated with a premises that causes or results in:

- (1) An act of harassment, as defined in Wis. Stats. § 947.013;
- (2) Disorderly conduct, as defined in Wis. Stats. § 947.01;
- (3) Battery, substantial battery, or aggravated battery, as defined in Wis. Stats. § 940.19;
- (4) Lewd and lascivious behavior, as defined in Wis. Stats. § 944.20;
- (5) Prostitution, as defined in Wis. Stats. § 944.30;
- (6) Theft, as defined in Wis. Stats. § 943.20;
- (7) Receiving stolen property, as defined in Wis. Stats. § 943.34;
- (8) Arson, as defined in Wis. Stats. § 943.02;

- (9) Possession, manufacture, or delivery of a controlled substance or related offenses, as defined in Wis. Stats. Ch. 961;
- (10) Gambling, as defined in Wis. Stats. § 945.02;
- (11) Trespassing, as defined in Wis. Stats. §§ 943.13 and 943.14;
- (12) The execution of arrest or search warrants at a particular premises;
- (13) Alcohol violations, as defined in section 14-24 of the Code, and Wis. Stats. § 125.07;
- (14) Obstructing or resisting an officer, as defined in Wis. Stats. § 946.41;
- (15) Violation of occupancy restrictions, as defined in the Code;
- (16) Any conspiracy to commit, as defined in Wis. Stats. § 939.31, or attempt to commit, as defined in Wis. Stats. § 939.32, any of the activities, behaviors, or conduct enumerated in this subsection (b);
- (17) Making, continuing or causing to be made any loud, disturbing or unnecessary sounds or noises emanating from or in the proximity to a premises by persons associated with that premises, such as horns, whistles, music amplification equipment, public address systems; ~~and construction or repair machinery or garden and lawn equipment between the hours of 10:00 p.m. and 6:00 a.m., which would tend to annoy or disturb a person of ordinary sensibilities in the proximity of the premises.~~
- (18) Repeated or continuing violations of sec. 46-133.

(c) *Chronic nuisance notice to property owner.* Whenever the police department has responded to three or more nuisance activities that have occurred at a premises during any consecutive 12-month period, the chief may notify the premises owner or occupant in writing that the premises constitutes a chronic nuisance. In calculating the requisite nuisance activities, the chief may count separate qualifying nuisance activities occurring on the same day (as long as they are distinct in time) or different days and further may consider whether or not to count a qualifying nuisance activity when it is reported by a person associated with the premises under circumstances that would encourage and not penalize self-reporting and facilitate police response for the benefit of the community.

Pursuant to Wis. Stats. § 66.0627(7), police department responses related to (a) domestic abuse, as defined in § 813.12 (1) (am), (b) sexual assault, as described under §§ 940.225, 948.02, and 948.025, or (c) stalking, as described in § 940.32 shall not be used in calculating the nuisance activities to constitute a chronic nuisance.

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.

(d) The notice required in subsection (c) above shall be deemed to be properly delivered if sent either by first class mail to the premises owner's or occupant's last known address (deemed delivered on third day after depositing in mail) or if delivered in person to the premises owner. If the premises owner or occupant cannot be located, the notice shall be deemed to be properly delivered if a copy of it is left at the premises owner's or occupant's usual place of abode in the presence of some competent member of the family at least 14 years of age or a competent adult currently residing there and who shall be informed of the contents of the notice. If a current address cannot be located, it shall be deemed sufficient if a copy of the notice is sent by first class mail to the last known address of the owner or occupant as listed in city records.

Sec. 50-7. Abatement plan.

Any owner receiving notice pursuant to section 50-6 shall meet with the chief within five days of receipt of such notice. The parties shall review the nuisance activities occurring at the premises for the purpose of determining the appropriate abatement plan for the premises. Within ten days of this meeting unless the chief agrees in writing to a longer period, the owner shall comply with the abatement plan agreed upon with the chief to end the nuisance activity on the premises. The plan shall also specify a name, address, telephone number and if applicable a fax number and e-mail address of a person living within 60 miles of the premises who can be contacted in the event of further police, fire, or inspection contact.

Sec. 50-8. Penalties for failure to comply with abatement plan.

Any person failing to comply with the abatement plan under section 50-7 shall be subject to a penalty as provided under section 1-7 of the Code.

Sec. 50-9. Additional nuisance activity.

If additional nuisance activity shall occur within 12 months after the notice authorized under subsection 50-6(c) has been issued to the owner or occupant, and this additional nuisance activity has occurred not less than 15 days after such notice had been served, and the chief determines that reasonable efforts have not yet been made to abate the nuisance activity, then the chief shall calculate the cost of police department personnel response for this additional and any subsequent nuisance activities occurring within 12 months of the last nuisance activity, and shall prepare a statement of such costs to be assessed to the owner or occupant of the premises as a special charge against the property. The chief shall send the assessment of the cost of police response to the premises owner or occupant and notify the owner or occupant in writing that the assessment must be paid within 30 days or it will be levied and collected as a special charge pursuant to Wis. Stats. § 66.0627. This assessment of police costs and the notice shall be prepared and delivered in the manner provided for in section 50-6, and the chief shall provide a copy to the office of the city treasurer.

Sec. 50-10. Eviction or retaliation prohibited.

(a) It shall be unlawful for a landlord to terminate the lease agreement or

periodic tenancy of any tenant or otherwise retaliate against any tenant because that tenant complained to the chief about nuisance activity on the landlord's premises. It shall be presumed that any attempt to increase charges, reduce services, or to otherwise harass or retaliate against the tenant during the twelve-month period following receipt of the complaint by the chief constitutes unlawful retaliation under this subsection. Such presumption shall be rebutted by the preponderance of evidence that the actions taken by the landlord were based upon good cause. "Good cause" as used in this subsection means that a landlord must show good cause for his or her actions, other than one related to or caused by the operation of this section. Notwithstanding the foregoing, a tenant's lease agreement or periodic tenancy may be terminated for a failure to pay rent; committing nuisance activity as defined in section 50-67; violating the terms and conditions of the lease agreement or periodic tenancy or as otherwise provided in Wis. Stats. ch. 709, and ch. Ag. 134, Wis. Adm. Code. A landlord's failure to renew a lease agreement or periodic tenancy upon expiration of such lease agreement or periodic tenancy shall not be deemed a violation of this subsection.

(b) Any person violating the above section shall be subject to a penalty as provided under section 1-7 of the Code.

Sec. 50-11. Appeal.

The chief's decision under sections 50-6 through 50-9 may be appealed to the board of appeals in accordance with the provisions of section 58-41 of the Code, except that any appeal of the chief's decision(s) under sections 50-6 through 50-9 of the Code must be filed within 15 days of receipt of the written decision or order being appealed. The board of appeals, after deciding such appeal(s) under this article, shall transmit a signed copy of the board's decision to the appellant and to the chief.

SECTION III

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION IV

All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION V

This Ordinance shall become effective the day after its publication as provided by law.

Approved by: Andrew Nerbun, Mayor

Date Approved: February 14, 2023

I certify that the foregoing Ordinance was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on February 14, 2023.

Caroline Fochs, City Clerk

Published: _____

EXHIBIT A
Clean Version of Chapter 50 as Revised

Sec. 50-1. Public nuisance defined and prohibited.

- (a) A public nuisance is a thing, act, occupation or use of property, which shall repeatedly occur or continue for a sufficient length of time so as to:
- (1) Injure or endanger the safety, health, comfort or repose of the public;
 - (2) Offends public morals or decency;
 - (3) Unlawfully interfere with, obstruct, or tend to obstruct or render dangerous for passage a lake, navigable river, bay, stream, canal or basin or a public park, square, street, alley or highway;
 - (4) In any way render the public insecure in life or in the use of property;
 - (5) Generate three or more calls for police service for nuisance activities which occur at a premises, within a calendar year, in accordance with section 50-6 below.
- (b) In all cases where no provision is herein made defining what are nuisances and how the same may be removed, abated, or pre-vented, in addition to what may be declared herein, those offenses which are known to the common law of the land and the Wisconsin Statutes as nuisances, may, in case the same exist within the city limits, be treated as such offenses and proceeded against as provided in this section or in accordance with other provisions of law.
- (c) No person shall within the city, cause or create a public nuisance or permit a public nuisance to remain on premises owned or occupied by him.

Sec. 50-2. Public nuisances affecting health.

- (a) No person shall within the City of Mequon, cause or create any public health nuisance or permit any public health nuisance to remain on premises owned or occupied by him.
- (b) The following are hereby specifically declared to be nuisances affecting the public health:
- (1) All decayed, spoiled, tainted, unwholesome or harmfully adulterated food, drink or drugs offered for sale to the public;
 - (2) All ponds or pools of stagnant water in which mosquitoes, flies or other insects can multiply;
 - (3) Carcasses of animals or fowl not buried, destroyed or otherwise disposed of in a sanitary manner within 24 hours after death;
 - (4) Accumulations of decayed animal or vegetable matter, trash, manure, rubbish, rotting lumber or other debris to which are attracted flies, mosquitoes, insects, rats or other vermin;
 - (5) Privy vaults and garbage cans which are not fly tight;
 - (6) Pollution of any public well or cistern, stream, lake, canal or body of water by sewage, creamery or industrial waste or other substances;

- (7) All noxious weeds as follows: Canada thistle, leafy spurge, field bindweed (creeping Jenny), and burdock, poison ivy, common ragweed and giant ragweed;
- (8) Dense smoke, noxious fumes, gas, soot, cinders, fly ash or industrial dust in such quantities as to render the occupancy of property dangerous or uncomfortable to a person of ordinary sensibilities;
- (9) Any dilapidated structure or building which harbors or is infested with vermin or rodents.
- (10) The presence of wastewater or sewage effluent from buildings on the ground surface, backing up into the building and/or running into a surface water body, caused by a damaged, malfunctioning, improperly constructed or inadequately maintained private sewage system or private sewage lateral; also, any wastewater or sewage effluent that is not handled and disposed of in compliance with all applicable county and state codes.

Sec. 50-3. Public nuisances affecting morals and decency.

- (a) No person shall within the City of Mequon, cause or create a public morals or decency nuisance or permit such nuisance to remain on premises owned or occupied by him.
- (b) The following are hereby specifically declared to be public nuisances offending public morals and decency:
 - (1) All gambling devices, slot machines and punch boards, except as approved by the state;
 - (2) All houses kept for the purpose of prostitution or gambling.

Sec. 50-4. Public nuisances affecting peace and safety.

- (a) No person shall within the City of Mequon, cause or create a public peace or safety nuisance or permit such nuisance to remain on premises owned or occupied by him.
- (b) The following are specifically declared to be nuisances disturbing the public peace or endangering the public safety:
 - (1) All trees, hedges, billboards of other obstructions which prevent persons driving automobiles or other vehicles on the city streets from having a clear view of traffic approaching an intersection from cross streets;
 - (2) Making, continuing or causing to be made any loud, discordant, disturbing or unnecessary sounds or noises and/or annoying vibrations emanating from or in the proximity to a premises by persons associated with that premises, such as horns, whistles, music amplification equipment, public address systems, which would tend to annoy or disturb a person of ordinary sensibilities in the proximity of the premises;
 - (3) All open or unguarded wells, cisterns, pools or excavations so located as to endanger public safety or the safety of children;
 - (4) All buildings, walls and other structures, which have been damaged by fire, decay or otherwise to an extent exceeding one-half their assessed value;
 - (5) All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use;

- (6) All unauthorized signs, signals, markings or devices which purport to be or may be mistaken as an official traffic control device placed or maintained upon or in view of any public highway, street, alley or railway crossing;
- (7) All hanging signs, awnings and other similar structures over the streets, alleys or public ways of the city or projecting more than six feet over the sidewalks or so situated or constructed as to endanger the public safety;
- (8) All tree limbs which are less than ten feet above the surface of any public sidewalk or 14 feet above the surface of any street;
- (9) All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;
- (10) The allowing of rain water, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk.
- (11) Keeping, harboring or maintaining any domestic pet which howls, barks, screeches, whines, cries or similar sounds which may be heard beyond the boundary of the property of the owner, keeper or harborer so as to materially interfere with or affect the health, comfort, peace and quiet of the public, or the reasonable use and enjoyment of the neighboring residential properties where the animal sounds are shown to have occurred either as an episode of continuous noise lasting for a minimum period of fifteen (15) minutes, or repeated episodes of intermittent noise lasting for a minimum period of thirty (30) minutes. It shall be an affirmative defense under this division that the animal was intentionally provoked by a party other than the owner to make such noise.
- (12) The operation of construction or repair machinery, recreational vehicles, garden and lawn equipment, or the like between the hours of 9:00 p.m. and 7:00 a.m. on Monday through Friday, or 9:00 p.m. and 8:00 a.m. on Saturday, Sunday and public holidays. For the purposes of this section, public holidays shall include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, and the day of the week shall be based upon the day on which the time period ends (e.g., from 9:00 p.m. Friday night to 8:00 a.m. Saturday morning shall be deemed a Saturday). This section shall not apply to emergency operations related to utility repairs, municipal operations (including snow removal) or agricultural operations.

Sec. 50-5. Abatement of nuisances.

(a) *Enforcement.* The chief of police, the chief of the Southern Ozaukee Fire and Emergency Medical Services Department, director of the community development department, city engineer, and the building inspector shall have the power and authority to 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 appropriate official shall have inspected or caused to be inspected the premises where the nuisance is alleged to exist and has been satisfied that a nuisance does in fact exist.

(b) *Summary abatement procedure.*

(1) *Notice.* If the inspecting official shall determine that a public nuisance exists on within the city and that there is great and immediate danger to the public health, safety,

morals, decency or peace, the mayor shall direct the chief of police to serve notice on the person causing, permitting or maintaining such nuisance or upon the owner or occupant of the premises where such nuisance is caused, permitted or maintained, and, if the owner is a non-resident or cannot be found, post a copy of said notice on the premises. Such notice shall direct the person causing, permitting or maintaining such nuisance or the owner or occupant, as the case may be, to abate or remove such nuisance within a reasonable time of not less than 24 hours and shall state that unless such nuisance is so abated, the city will cause the same to be abated and will charge the cost thereof to the person causing, permitting or maintaining the nuisance, owner or occupant as the case may be.

(2) If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the inspecting official shall cause the abatement or removal of such public nuisance.

(c) *Abatement in other cases.* If the inspecting official shall determine that a public nuisance exists within the city, but that the nature of such nuisance does not threaten great and immediate danger to the public health, safety, peace, morals, decency or peace, the mayor shall direct the inspecting official to serve notice on the person causing, permitting or maintaining such nuisance or upon the owner or occupant of the premises where such nuisance is caused, permitted or maintained, and, if the owner is a non-resident or cannot be found, to post a copy of said notice on the premises. Such notice shall direct the person causing, permitting or maintaining such nuisance or the owner or occupant, as the case may be, to abate or remove such nuisance within a reasonable time of not less than 10 days. . If such nuisance is not abated or removed within 10 days, the inspecting official shall report such fact to the mayor, who may direct the city attorney to commence an action in circuit court for the abatement of the nuisance.

(d) *Cost of abating nuisance.* In addition to any other penalty imposed under this chapter for the maintenance of a nuisance, the cost of abating or removing a nuisance by the city shall be collected from the owner or occupant or person causing, permitting or maintaining said nuisance or, if notice to abate such nuisance has been given to the owner, such costs may be charged against the premises and assessed against the real estate as a special charge.

(e) *Remedies not exclusive.* 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, nor as prohibiting an action to be commenced in the circuit court seeking a forfeiture as provided in section 1-7 of this Code.

Sec. 50-6. Chronic nuisances premises.

(a) *Findings.* The city council finds that any premises that generates three or more responses in a one year period by the police department for nuisance activities as defined in subsection (b) below, has received more than the appropriate level of general and adequate city service and has placed an undue and inappropriate burden on the taxpayers of the city. The common council therefore authorizes the chief of police, as provided in this chapter, to require the premises owner or occupant to comply with nuisance abatement plans and to charge the owner or occupant of such premises the costs associated with abating the violations at the premises where nuisance activities chronically occur as set forth in section 50-9.

(b) *Definitions.* The following terms shall be defined as follows in this article, and the singular includes the plural and the plural includes the singular:

Chief means the chief of police or his or her designee.

Owner means a person who has legal title or possession, charge, care or control of premises, including as executor, administrator, trustee, or guardian of the estate of a person or property.

Person includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, limited liability company or any other legal entity.

Person associated with premises means the premises owner, operator, manager, resident, occupant, guest, visitor, or person present on the premises (other than trespasser) or employee or agent of any of the above persons associated with the premises.

Police department response means a sworn, on-duty city police officer is dispatched to a premises in response to a good faith report of nuisance activity, as defined below, occurring or having occurred at the premises, which complaint said officer finds to be credibly supported during his/her investigation, and which results in an arrest, or the issuance of a citation, or a criminal or juvenile complaint.

Premises means an individual building, dwelling, or dwelling unit and associated common areas or vacant land.

Nuisance activity means any of the following activities, behaviors, or conduct whenever engaged in by persons associated with a premises that causes or results in:

- (1) An act of harassment, as defined in Wis. Stats. § 947.013;
- (2) Disorderly conduct, as defined in Wis. Stats. § 947.01;
- (3) Battery, substantial battery, or aggravated battery, as defined in Wis. Stats. § 940.19;
- (4) Lewd and lascivious behavior, as defined in Wis. Stats. § 944.20;
- (5) Prostitution, as defined in Wis. Stats. § 944.30;
- (6) Theft, as defined in Wis. Stats. § 943.20;
- (7) Receiving stolen property, as defined in Wis. Stats. § 943.34;
- (8) Arson, as defined in Wis. Stats. § 943.02;
- (9) Possession, manufacture, or delivery of a controlled substance or related offenses, as defined in Wis. Stats. Ch. 961;
- (10) Gambling, as defined in Wis. Stats. § 945.02;
- (11) Trespassing, as defined in Wis. Stats. §§ 943.13 and 943.14;
- (12) The execution of arrest or search warrants at a particular premises;
- (13) Alcohol violations, as defined in section 14-24 of the Code, and Wis. Stats. § 125.07;
- (14) Obstructing or resisting an officer, as defined in Wis. Stats. § 946.41;

- (15) Violation of occupancy restrictions, as defined in the Code;
- (16) Any conspiracy to commit, as defined in Wis. Stats. § 939.31, or attempt to commit, as defined in Wis. Stats. § 939.32, any of the activities, behaviors, or conduct enumerated in this subsection (b);
- (17) Making, continuing or causing to be made any loud, disturbing or unnecessary sounds or noises emanating from or in the proximity to a premises by persons associated with that premises, such as horns, whistles, music amplification equipment, public address systems which would tend to annoy or disturb a person of ordinary sensibilities in the proximity of the premises.
- (18) Repeated or continual violations of § 46-133 related to construction noise.
- (19) Continual or repeated operation of garden or lawn equipment between the hours 9:00 p.m. and 7:00 a.m. on Monday through Friday, or 9:00 p.m. and 8:00 a.m. on Saturday or Sunday. For the purposes of this section, public holidays shall include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, and the day of the week shall be based upon the day on which the time period ends (e.g., from 9:00 p.m. Friday night to 8:00 a.m. Saturday morning shall be deemed a Saturday).

(c) *Chronic nuisance notice to property owner.* Whenever the police department has responded to three or more nuisance activities that have occurred at a premises during any consecutive 12-month period, the chief may notify the premises owner or occupant in writing that the premises constitutes a chronic nuisance. In calculating the requisite nuisance activities, the chief may count separate qualifying nuisance activities occurring on the same day (as long as they are distinct in time) or different days and further may consider whether or not to count a qualifying nuisance activity when it is reported by a person associated with the premises under circumstances that would encourage and not penalize self-reporting and facilitate police response for the benefit of the community.

Pursuant to Wis. Stats. § 66.0627(7), police department responses related to (a) domestic abuse, as defined in § 813.12 (1) (am), (b) sexual assault, as described under §§ 940.225, 948.02, and 948.025, or (c) stalking, as described in § 940.32 shall not be used in calculating the nuisance activities to constitute a chronic nuisance.

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.

(d) The notice required in subsection (c) above shall be deemed to be properly delivered if sent either by first class mail to the premises owner's or occupant's last known address (deemed delivered on third day after depositing in mail) or if delivered in person to the premises owner. If the premises owner or occupant cannot be located, the notice shall be deemed to be properly delivered if a copy of it is left at the premises owner's or occupant's usual place of abode in the presence of some competent member of the family at least 14 years of age or a competent adult currently residing there and who shall be informed of the contents of the notice. If a current address cannot be located, it shall be deemed sufficient if a copy of the notice is sent by first class mail to the last known address of the owner or occupant as listed in city records.

Sec. 50-7. Abatement plan.

Any owner receiving notice pursuant to section 50-6 shall meet with the chief within five days of receipt of such notice. The parties shall review the nuisance activities occurring at the premises for the purpose of determining the appropriate abatement plan for the premises. Within ten days of this meeting unless the chief agrees in writing to a longer period, the owner shall comply with the abatement plan agreed upon with the chief to end the nuisance activity on the premises. The plan shall also specify a name, address, telephone number and if applicable a fax number and e-mail address of a person living within 60 miles of the premises who can be contacted in the event of further police, fire, or inspection contact.

Sec. 50-8. Penalties for failure to comply with abatement plan.

Any person failing to comply with the abatement plan under section 50-7 shall be subject to a penalty as provided under section 1-7 of the Code.

Sec. 50-9. Additional nuisance activity.

If additional nuisance activity shall occur within 12 months after the notice authorized under subsection 50-6(c) has been issued to the owner or occupant, and this additional nuisance activity has occurred not less than 15 days after such notice had been served, and the chief determines that reasonable efforts have not yet been made to abate the nuisance activity, then the chief shall calculate the cost of police department personnel response for this additional and any subsequent nuisance activities occurring within 12 months of the last nuisance activity, and shall prepare a statement of such costs to be assessed to the owner or occupant of the premises as a special charge against the property. The chief shall send the assessment of the cost of police response to the premises owner or occupant and notify the owner or occupant in writing that the assessment must be paid within 30 days or it will be levied and collected as a special charge pursuant to Wis. Stats. § 66.0627. This assessment of police costs and the notice shall be prepared and delivered in the manner provided for in section 50-6, and the chief shall provide a copy to the office of the city treasurer.

Sec. 50-10. Eviction or retaliation prohibited.

(a) It shall be unlawful for a landlord to terminate the lease agreement or periodic tenancy of any tenant or otherwise retaliate against any tenant because that tenant complained to the chief about nuisance activity on the landlord's premises. It shall be presumed that any attempt to increase charges, reduce services, or to otherwise harass or retaliate against the tenant during the twelve-month period following receipt of the complaint by the chief constitutes unlawful retaliation under this subsection. Such presumption shall be rebutted by the preponderance of evidence that the actions taken by the landlord were based upon good cause. "Good cause" as used in this subsection means that a landlord must show good cause for his or her actions, other than one related to or caused by the operation of this section. Notwithstanding the foregoing, a tenant's lease agreement or periodic tenancy may be terminated for a failure to pay rent; committing nuisance activity as defined in section 50-67; violating the terms and conditions of the lease agreement or periodic tenancy or as otherwise provided in Wis. Stats. ch. 709, and ch. Ag. 134, Wis. Adm. Code. A landlord's failure to renew a lease agreement or periodic tenancy upon expiration of such lease agreement or periodic tenancy shall not be deemed a violation of this subsection.

(b) Any person violating the above section shall be subject to a penalty as provided under section 1-7 of the Code.

Sec. 50-11. Appeal.

The chief's decision under sections 50-6 through 50-9 may be appealed to the board of appeals in accordance with the provisions of section 58-41 of the Code, except that any appeal of the chief's decision(s) under sections 50-6 through 50-9 of the Code must be filed within 15 days of receipt of the written decision or order being appealed. The board of appeals, after deciding such appeal(s) under this article, shall transmit a signed copy of the board's decision to the appellant and to the chief.



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Office of City Attorney

TO: Public Welfare Committee
FROM: Brian Sajdak, City Attorney
DATE: February 9, 2023
SUBJECT: An Ordinance Amending Section 10-26 of the Mequon Code of Ordinances Related to Residential Swimming Pools Standards

Background

Historically, the City presently adopts the Wisconsin Uniform Building Code with respect to the installation of swimming pools. The Code requires fences for all non-temporary pool installations. A resident had approached the Public Welfare Committee to request that the City consider amending its code to allow for power safety covers in lieu of fences for residential pools. Following lengthy discussion, the Council approved changes last fall that allow for power safety covers in certain circumstances.

Following implementation of the changes, City building inspection staff identified multiple changes that could be made to clarify the regulations around pools and power safety covers and also eliminate conflict points between the ordinance and the ATSM standard. These changes would clarify the approval process for both staff and residents.

Discussion

Attached is a proposed ordinance which repeals and recreates Section 10-26 of the municipal code. The primary reason for the full repeal and readoption is that the current section contained online does not reflect consistent numbering for paragraphs as the rest of the code (e.g., in other sections the first paragraph in a section is labeled (a), whereas in this section it is labeled (1)). It is unclear if this was the result of drafting when the code was originally adopted or if this was an error by the company that codifies our code. This ordinance would clarify that the same numbering standard should apply here.

Also attached is a version of the code that shows the changes made in a redlined format. These changes are:

1. The definition of power safety cover is amended to simply require the cover to meet the applicable ATSM standard. Under the current version of the definition, we deviate from the standard in two ways. First, we require the operating switch to be placed at least five feet above the ground in all cases. Under the standard, only a switch that is not lockable (e.g., secure enclosure, keypad, keyed operation) needs to be that high. Second, we specify that a cover shall hold a minimum weight of 2,000. We have discovered that companies do not certify for weights

other than what is required by the ATSM standard. Further, there is a difference between the standard and our language as well. The code language specifies only that the pool cover hold 2,000 pounds in total whereas the ATSM specification (485 pounds) is based on a modified pounds per square foot basis (individual weights within 1 sq. ft. and the total weight clustered within a 3-foot radius). A cover that meets the ATSM specification would hold a higher amount of weight across the full area of the cover. Additionally, the ATSM standard is the better standard to address the safety concerns previously identified in that the per sq. ft. basis ensures higher safety than a standard across the full cover. This coupled with the lack of certification method for the 2,000 pound standard suggests modification of this requirement is appropriate.

2. In both areas where latches are described, the height for the latching mechanism is reduced from 54 inches to 36 inches, which is the height specified in the Uniform Building Code. This height retains the safety for toddlers while also ensuring that the latches comply with ADA accessibility concerns.

3. The requirement of both an alarm and a pool cover has been removed. The code as adopted requires that where a power safety cover is in place, the cover needs to be closed unless it is actively in use or supervised by someone over the age of 15. However, the code also requires that the pool in these circumstances is equipped with an alarm. These requirements are contradictory in that the alarm would not be armed if the pool is in use, but there would be no need for an alarm where the cover is in place - which is required if the pool is not in use. In addition, staff has learned that some types of alarms would physically conflict with a pool covers operation.

BCS

Recommendation

Recommendation forthcoming from Public Welfare Committee on February 14, 2023.

COMMON COUNCIL
OF THE
CITY OF MEQUON

An Ordinance Amending Section 10-26 of the Mequon Code of Ordinances Related to
Residential Swimming Pools Standards

RECITALS

A. The Common Council previously adopted section 10-26 of the Mequon Municipal Code which establishes certain regulations for residential swimming pools including the use of power safety covers.

B. Following the adoption of those regulations, City staff identified multiple corrections or clarifications that would improve the enforcement of the code.

C. The Common Council desires to amend those regulations pursuant to staff recommendations.

D. The regulation of swimming pools furthers the health, safety and welfare of the community.

BASED UPON THE FOREGOING RECITALS, the Common Council of the City of Mequon, Wisconsin, do ordain as follows:

SECTION I

Section 10-26 of the Mequon Municipal Code is repealed and recreated to read as follows:

10-26 - Residential Swimming Pools.

No person shall construct, install or enlarge a residential swimming pool not enclosed in a permanent building within the city except in accordance with the following regulations.

(a) Definitions.

(1) "Swimming pool" means any depression in the ground, either temporary or permanent, or a container of water, either temporary or permanent and either above or below the ground, in which water more than 18 inches deep is contained and which is used primarily for the purpose of bathing or swimming. "Swimming pool" includes a spa, hot tub, and temporary pool unless otherwise specifically excluded within this

section.

(2) "Temporary pool" means any swimming pool that has a surface area of less than 314.159 square feet (20-foot diameter) which is installed for any length of time less than four (4) months and which is installed after May 1 and removed by September 30 in the same year.

(3) "Power safety cover" means a barrier which can be placed over the water area of a pool that provides a high level of safety for children under the age of five by inhibiting their access to the water which is certified to meet the minimum qualification criteria for a Power Safety Cover as specified in American Society for Testing and Materials (ASTM) specification 1346-91 provided that any operating switch be located within the line of sight of the operation of the cover and is operated by a secure key or keypad. An operating switch that is not operated by a key or keypad shall be installed at least 5 feet above the surface below the switch.

(4) "Decorative" as applied to fences means that a fence is made of PVC, wrought iron, or aluminum pickets, or is a painted or stained shadow-box or board-on-board type fence, or similar design as approved by the Department of Community Development. Decorative shall not include chain link, snow or other temporary fencing.

(b) Permit.

(1) Required. No person shall construct, install, enlarge or alter any private swimming pool, including changing any fence or safety device, unless a permit therefor has first been obtained from the Building Inspector. A temporary pool shall be exempt from this permit requirement.

(2) Application. The following information shall be required:

a. Survey or accurate drawing of the property, in duplicate, showing all existing structures, proposed swimming pool or spa location, fencing if required, and overhead or underground electrical wiring.

b. Type of pool installation, above ground or in-ground.

c. Pool height above highest point of grade if above ground installations.

d. Type and height of fence, if proposed.

- e. Type and support of decking, if proposed.
- f. Type and location of safety features to be installed, if proposed.
- g. Overall size and locations of the above in regard to existing buildings and lot lines for property survey reference.
- h. Any change in finished grade near pool.
- i. County Health Department approval for properties using a private septic system, where applicable.
- j. Site inspection letter from a local wiring utility.
- k. Two copies of brochure which shows the type, style, etc. of the swimming pool and safety features to be installed.

(c) Construction Requirements.

- (1) No swimming pool shall be located, erected, constructed or maintained within any front yard or closer to any side or rear lot line than allowed by Chapter 58 for permitted accessory structures, and the waterline of any swimming pool shall not be less than four feet from any lot line, wall, fence, structure or building, unless a more stringent requirement is provided for elsewhere in this code.
- (2) No connection shall be made to the sanitary sewer or septic system.
- (3) Gaseous chlorination systems shall not be used for disinfecting swimming pool waters.
- (4) Swimming pools shall be located from well and septic systems in accordance with the Wisconsin State Plumbing Code, Wis. Admin. Code § SPS 383.

(d) Fences or Other Safety Measures.

- (1) All non-temporary swimming pools not enclosed within a permanent building shall be completely enclosed by a decorative fence of sufficient strength to prevent access to the swimming pool, not less than four feet in height and so constructed as not to have voids, holes or openings larger than four inches in one dimension. No fence shall be

located, erected, constructed or maintained closer than four feet to a swimming pool. Gates or doors shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when not in actual use. Latches shall be located at least three feet above the ground, accessible deck or stairs. Temporary non-decorative fencing may be approved by the Department of Community Development for a period not to exceed 30 days where necessitated by construction and or safety concerns.

(2) The wall of the house or building facing a swimming pool may be incorporated as a portion of the fence required under paragraph (1) above provided that the swimming pool is equipped with at least one of the following:

- a. Removable mesh fencing that meets the standards of ASTM Specification F2286 in conjunction with a gate that is self-closing and self-latching and can accommodate a key lockable device.
- b. Exit alarms on all doors within a residence that provide direct access to the swimming pool or spa. The exit alarm may cause either an alarm noise or a verbal warning, such as a repeating notification that “the door to the pool is open.”
- c. A self-closing, self-latching device with a release mechanism placed no lower than 36 inches above the floor on all doors of a residence providing direct access to the swimming pool or spa.

(3) In lieu of a fence under paragraph (1) above, a swimming pool may utilize a power safety cover provided that:

- a. The pool is located on a single-family residential parcel within a single-family residential zoning district;
- b. The power safety cover is in working order;
- c. The power safety cover is closed and secured at all times where the pool is not in use by a person of at least 15 years of age or under supervision of a person who is outdoors, within 10 feet of the pool, and is at least 15 years of age;
- d. The water line of the pool is not closer than 30 feet from any lot line; and

e. The pool is also equipped with at least one of the following:

i. Removable mesh fencing that meets the standards of ASTM Specification F2286 in conjunction with a gate that is self-closing and self-latching and can accommodate a key lockable device.

ii. Exit alarms on all doors within a residence that provide direct access to the swimming pool or spa. The exit alarm may cause either an alarm noise or a verbal warning, such as a repeating notification that “the door to the pool is open.”

iii. A self-closing, self-latching device with a release mechanism placed no lower than 36 inches above the floor on all doors of a residence providing direct access to the swimming pool or spa.

(4) Above ground swimming pools with platforms and railings that are four feet or more in height above ground and temporary pools are not required to be enclosed as provided in paragraph (1) above; however, all ladders and stairways providing access to such swimming pools shall be removed from the swimming pool or shall be adequately fenced and fitted with gates or folded up and locked to prevent entry when the swimming pool is not in use.

(5) Spas and hot tubs are exempt from the fence requirement under paragraph (1) above provided that such spa or hot tub has a locking safety cover which is certified to meet ASTM specification 1346-91 and which shall be in place and locked when the hot tub or spa is not in use.

(e) Electrical Requirements. All electrical installations shall require separate permits and shall be governed by the City or State Electrical Code.

(f) Pool Lights. If overhead flood or other artificial lights are used to illuminate the swimming pool at night, such lights shall be shielded to direct light only on the swimming pool.

(g) Swimming Pool Decks. All decks shall be constructed in accordance with the Uniform Building Code. Decking shall be considered an integral part of the swimming pool and shall comply with the applicable setback dimensions per the local zoning code.

(h) Drainage. In no case shall any swimming pool be drained onto lands of property owners other than the owner of the swimming pool. Drainage shall be in accordance with city code.

(i) Use of Swimming Pool. No swimming pool shall be so operated as to create a nuisance, a hazard or an eyesore or otherwise to result in a substantial adverse effect on neighboring properties. Repeated violations of this code shall constitute a public nuisance, abatement of which may include removal of the pool in addition to all other remedies available by law.

(j) Applicability of codes and standards. Where this section adopts or references a specific code, standard, specification or the like, such adoption or reference shall include all amendments and revisions thereto, and the most recent version in effect at the time a pool (or any of its safety features) is constructed, installed, changed, remodeled, or enlarged shall apply.

SECTION II

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION III

All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION IV

This Ordinance shall become effective the day after its publication as provided by law.

Approved by: Andrew Nerbun, Mayor

Date Approved: February 14, 2023

I certify that the foregoing Ordinance was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on February 14, 2023.

Caroline Fochs, City Clerk

Published: _____



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Office of Administration

TO: Public Welfare Committee
FROM: Carrie Enea, Executive Assistant
DATE: February 9, 2023
SUBJECT: RESOLUTION 4012 A Resolution Authorizing Renewal of an Application with Bird City Wisconsin and Observing World Migratory Bird Day in Conjunction with Arbor Day

Background

The City of Mequon was first designated as a “Bird City” under former Mayor Nuernberg in 2010 and this has been renewed annually ever since. In 2015, the application renewal process was updated to require the adoption of a resolution annually by the Common Council. A draft resolution is attached.

Analysis

In 2023, Bird City activities will be observed in conjunction with the City of Mequon’s Arbor Day festivities and City staff will provide public information about migratory bird conservation as noted in the resolution.

Fiscal Impact

The Mequon Nature Preserve and City staff work closely to coordinate Bird City activities that are primarily education-based. The application renewal fee of \$175 is paid for by Mequon Nature Preserve.

Recommendation

City staff recommends that the Public Welfare Committee and the Common Council approve the proposed resolution as attached.

COMMON COUNCIL
OF THE
CITY OF MEQUON

RESOLUTION 4012

A Resolution Authorizing Renewal of an Application with Bird City Wisconsin and Observing
World Migratory Bird Day in Conjunction with Arbor Day

RECITALS

A. Migratory birds are some of the most beautiful and easily observed wildlife that enhance the Mequon community.

B. Local residents recognize and welcome migratory songbirds as symbolic harbingers of spring and enjoy all the opportunities they have to engage in great recreational endeavors such as bird-watching and nature photography.

C. Migrant bird species also play an important economic role in the community, controlling insect pests and generating revenue related to bird watching activities.

D. Public awareness and concern are crucial components of migratory bird conservation where residents can directly contribute to maintaining healthy bird populations.

E. Since 1993, World Migratory Bird Day (WMBD) has become a primary vehicle for focusing public attention on the nearly 350 species that travel between nesting habitats in the City of Mequon and throughout North America and their wintering grounds in South and Central America, Mexico, the Caribbean and the southern United States.

BASED UPON THE FOREGOING RECITALS, IT IS RESOLVED by the Common Council of the City of Mequon, Wisconsin that:

1. World Migratory Bird Day will be celebrated/observed in conjunction with the City of Mequon's Arbor Day Festivities on April 30, 2023 and public information will be provided about migratory bird conservation and the importance of taking action to protect and conserve migratory birds and their habitats throughout the community.

2. The City, in conjunction with the Mequon Nature Preserve, has submitted an application and associated fee to Bird City Wisconsin allowing the City of Mequon to maintain its "Bird City" designation.

3. These actions will continue to enhance the City's reputation for leadership in protecting the natural environment and bird habitats, while recognizing the interest of many of its residents in bird conservation.

Approved by: Andrew Nerbun, Mayor

Date Approved: February 14, 2023

I certify that the foregoing Resolution was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on February 14, 2023.

Caroline Fochs, City Clerk



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Office of Administration

TO: Public Welfare Committee
FROM: Carrie Enea, Executive Assistant
DATE: February 9, 2023
SUBJECT: RESOLUTION 4011 A Resolution Designating Mequon, Wisconsin as a Bee City USA

Background

The Mequon Nature Preserve, on behalf of the City of Mequon, is working on renewing the City's Bee City USA application for 2023. The City was first designated as a Bee City upon Common Council approval of Resolution 3370 on April 12, 2016. The 2023 renewal process requires a resolution be adopted by the Common Council. A draft resolution is attached, and it should be noted that the resolution was prepared in accord with Bee City USA guidelines; hence there is a significant amount of required text.

Analysis

In 2006 when honeybee colonies started disappearing, later dubbed "Colony Collapse Disorder," beekeepers and non-beekeepers alike became very concerned. After all, one in every three bites of food that is consumed is courtesy of insect pollination. Equally important, 85% of flowering plants and trees rely on pollinators for the survival of their species. While less is known about native bees and other pollinators, entire species are disappearing as they battle most of the same enemies as honeybees - loss of habitat essential for food and shelter, inappropriate pesticide use, diseases, and parasites.

Launched in 2012, the Bee City USA program endorses a set of commitments, defined in a resolution, for creating sustainable habitats for pollinators, which are vital to feeding the planet. Cities, towns, and communities across America are invited to make these commitments and become certified as a Bee City USA affiliate.

Fiscal Impact

The Mequon Nature Preserve staff will take the lead on any associated activities and publicity efforts. The application renewal fee of \$300, which is based on the population size of Mequon, is paid for by the Mequon Nature Preserve.

Recommendation

City staff recommends that the Public Welfare Committee and the Common Council approve the proposed resolution as attached.

COMMON COUNCIL
OF THE
CITY OF MEQUON

RESOLUTION 4011

A Resolution Designating Mequon, Wisconsin as a Bee City USA

RECITALS

A. The goal of the BEE CITY USA program is to promote healthy, sustainable habitats and communities for bees and other pollinators.

B. Thanks to the tremendous diversity of wild native bees, along with honeybees that were brought here from Europe in the 1700s, we have very diverse dietary choices rich in fruits, nuts, and vegetables.

C. Bees and other pollinators around the globe have experienced dramatic declines due to a combination of habitat loss, use of pesticides, and the spread of pests and diseases, with grave implications for the future health of flora and fauna.

D. Communities have the opportunity to support bees and other pollinators on both public and private land.

E. Supporting pollinators fosters environmental awareness and sustainability and increases interactions among community stewards such as commercial and backyard beekeepers, farmers, children, educators, Master Naturalists, Master Gardeners, plant nurseries, municipalities, neighborhoods, and garden suppliers and clubs.

F. The economic benefits of (native and honey) bee-friendliness include:

- Healthy ecosystems - insect pollinators are required for pollination and reproduction of about 85% of flowering plants globally, plants that: 1) are vital for clean air and water; 2) provide food, fiber and shelter for people and wildlife; and 3) support the very insects that pollinate crops and form the basis of food webs.
- Increased vegetable and fruit crop yields due to bee pollination.
- Increased habitat for natural enemies of crop pests and therefore reduced need for and costs associated with pesticides.
- Increased demand for pollinator-friendly plant materials from local nurseries and growers.
- Income earned by beekeepers and others through the sale of bee products, beekeeping equipment and supplies, and hive rentals for pollination; and, heightened prestige and premium asking prices for place-based honey, which enhances the visibility and reputation of its community of origin.

G. Mequon, Wisconsin should be certified a BEE CITY USA community because:

- Community interest in supporting sustainable habitats for bees and other pollinators has grown as the decline in pollinator populations and habitat has received greater local and national media attention.
- The Mequon Nature Preserve has become a trusted community resource and facilitator of honeybee education.
- Resident participation in the local bee club sponsored by the Mequon Nature Preserve has increased steadily, demonstrating the community's growing desire to learn about bees and share experiences.

H. Ideal pollinator-friendly habitats:

- Provide diverse and abundant nectar and pollen from plants blooming in succession.
- Provide clean water for drinking, nest-building, cooling, diluting stored honey, and butterfly puddling.
- Are pesticide-free or have pesticide use carried out in a manner to minimize effects on pollinators.
- Are comprised of mostly, if not all, native species of annual and perennial wildflowers, shrubs, trees, and grasses because many native pollinators prefer or depend on the native plants with which they co-evolved.
- Include, where possible, designated pollinator zones in public spaces with signage to educate the public and build awareness.
- Provide for safe and humane removal of bees when required.
- Provide undisturbed spaces (leaf and brush piles, un-mowed fields, or field margins, fallen tree and other dead wood) for nesting and overwintering for native pollinators.

I. In order to enhance understanding among local government staff and the public about the vital role that pollinators play and what each of us can do to sustain them, Mequon, Wisconsin agrees to meet the following commitments required of all BEE CITY USA communities:

1. Pass this BEE CITY USA resolution (which articulates these commitments).
2. The Mequon Nature Preserve is hereby designated as the Bee City USA sponsor and Kristin Gies, Executive Director, as the Bee City USA "liaison" to encourage and coordinate local pollinator habitat and awareness activities. This body will serve as the intermediary between the citizenry and local government on matters of enhancing pollinator awareness, health, and habitat, fulfilling the following commitments:
 - a. Annually celebrate National Pollinator Week (third full week of June) or some other appropriate occasion with educational events, pollinator habitat plantings or restoration, proclamations or

promotions that showcase the municipality's commitment to enhancing pollinator health and habitat.

- b. Annually apply for renewal of the community's designation and submit a report of the previous year's BEE CITY USA activities following the format provided.
3. Publicly acknowledge the community's commitment by agreeing to:
- a. install/maintain at least one authorized BEE CITY USA street sign in a prominent location.
 - b. create/maintain links on appropriate pages of the local government's website which includes, at minimum, links to a PDF of this signed Resolution and the national BEE CITY USA website, contact information for the local government's BEE CITY USA liaison and designated "facilitator commission or non-profit organization committee," and reports of the pollinator-friendly activities the community has accomplished the previous year(s).

BASED UPON THE FOREGOING RECITALS, IT IS RESOLVED by the Common Council of the City of Mequon, Wisconsin that the Mequon Nature Preserve is authorized to submit an application to Bee City USA on behalf of the City of Mequon to obtain a "Bee City" designation and commits to the standards of Bee City USA.

Approved by: Andrew Nerbun, Mayor

Date Approved: February 14, 2023

I certify that the foregoing Resolution was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on February 14, 2023.

Caroline Fochs, City Clerk



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Office of Administration

TO: Public Welfare Committee
FROM: Justin Schoenemann, Assistant City Administrator
DATE: February 7, 2023
SUBJECT: Work Calendar

Meeting Topics

January

- Nuisance Ordinance (Continued)
- No Mow May
- Solar Panels / Setbacks

February

- Nuisance Ordinance (Continued)
- Pool Cover Ordinance
- Bird City Designation
- Bee City Designation

March

- Nuisance Ordinance (Continued)
- Grass Length Ordinance for No Mo Way (Continued - Going To Planning Commission)

New Topics For Consideration

- Recreation Vehicle Length
- City Cell Phones

Future Agenda Topics

- Architectural Board Review (Continued)
- Chapter II, Article IV Review (Continued)
- Home Irrigation Systems (Fall 22)
- Composting Plan (2023)
- Community Survey
- Adopt-A-Median Program
- Community Outreach Initiatives
- Logo Redesign/Branding

2023 Completed Items

- Setbacks For R-2 Zoning District