

CHAPTER 6
PUBLIC HEALTH

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PUBLIC HEALTH

6.01 FLUORIDATION OF CITY WATER.

The Public Works Director is authorized and directed to provide the means to introduce approximately one part of fluorine to every million parts of water distributed in the water supply system of the City of Middleton.

6.02 COMPULSORY CONNECTION TO CITY SEWER AND WATER.

(1) When Required. Whenever a sewer or water main becomes available to a building used for human habitation, the Committee shall notify, in writing, the owner or his or her agent to connect the building thereto and to install such facilities as may be reasonably necessary to accomplish such connection. The manner of connection shall be prescribed by the Public Works Committee and shall be set forth in the notice given by the Public Works Director.

(2) Contents of Notice. The notice required by this section shall be given in the manner prescribed by Wis. Stat. s. 262.08, or by registered mail addressed to the last known address of the owner or his or her agent.

(3) Public Works Director May Cause Connection At Expense of Owner. If the owner or his or her agent fails to comply after thirty (30) days notice as herein provided, the Public Works Director may cause the connection or connections to be made and the expense thereof assessed as a special assessment tax against the property.

(4) Installment Option. The owner, or his or her agent, may within thirty (30) days after the completion of the work file a written option with the City Clerk stating that he or she cannot pay the cost of connection in one sum and that he or she elects that such sum be levied in five (5) equal annual installments, with interest on the unpaid balance as prescribed by City policy.

(5) Privies, Cesspools, Etc. Prohibited After Connection with Sewer. After connection of any building used for human habitation to a sewer main, no privy, cesspool or waterless toilet shall be used in connection with or upon the premises of such human habitation.

(6) Penalty. Whoever shall violate any lawful order issued by the Public Works Director shall be subject to a penalty as prescribed by section 30.04 of this Code. Each day of violation shall constitute a separate offense; provided, however, that no forfeiture or imprisonment shall be imposed where the connection is made and the expense thereof is charged as a special assessment against the property.

6.03 ABANDONMENT OF PRIVATE WELLS.

(1) Purpose.

- a. To protect the usable groundwater by eliminating sources of contaminated surface waters or other materials.
- b. To provide for public safety.

(2) Application. All unused and/or improperly constructed private wells shall be properly filled and sealed as required by the Wisconsin Administrative Code, NR 112. Owners shall have sixty (60) days to comply with abandonment notices issued by the City Engineer. Only those wells for which a well operation permit has been granted by the City Engineer may be exempted from this requirement; subject to conditions of maintenance and operation.

(3) Well Operation Permits. A permit may be granted to a well owner to operate a well for a period not to exceed three (3) years if the following requirements are met (application shall be made on forms provided by the City Engineer):

- a. The well and pump installation meet the requirements of Chapter NR 112, Wisconsin Administrative Code.
- b. The well has a history of producing safe water and presently produces bacteriologically safe water as evidenced by samples processed by a certified laboratory.
- c. The proposed use of the well can be justified as being necessary in addition to water provided by the public water system.
- d. No physical connection shall exist between the piping of the public water system and the private well.
- e. A fee as set forth in the Fee Schedule under Section 3.12 shall be charged at the time of application.

(4) Method. Wells to be abandoned shall be filled according to the procedures outlined in Chapter NR 112, Wisconsin Administrative Code. The pump and piping must be removed and the well checked for obstructions prior to plugging. Any obstruction or liner must be removed.

(5) Reports and Inspections. A well abandonment report must be submitted by the well owner to the Department of Natural Resources and the City on forms provided by that agency (available at the office of the City Engineer). The report shall be submitted immediately upon completion of the filling of the well. The filling must be observed by a

representative of the City.

(6) Penalties. Any person, firm, or other well owner violating any provision of this ordinance shall upon conviction be punished by a forfeiture of not less than \$50.00 nor more than \$100.00 for each offense. Each 24 hour period during which a violation exists shall be deemed and constitute a separate offense.

6.04 COLLECTION AND DISPOSAL OF SOLID WASTE.

(1) Purpose. The Common Council finds participation in an integrated waste reduction and mandatory recycling program appropriate in this jurisdiction to conserve available landfill capacity. The City further finds it appropriate to participate in both county-wide and state-wide recycling programs to conserve energy, recycle valuable resources, and to protect the public health, welfare and the environment.

(2) Definitions. The following words are defined in this ordinance section as follows:

“Brush” means tree and shrub trimmings not exceeding six (6) inches in diameter.

“Bulk Item” means trash that is too large to fit into designated trash collection containers. Examples include furniture and appliances.

“Cardboard” means paperboard or corrugated cardboard, and includes cereal or laundry detergent boxes, holders for multi-container packs of beverage cans or bottles and other similar packaging.

“Corrugated Cardboard” means any heavy-duty craft paper material with a corrugated paper medium between two flat paper sheets.

“Garbage” means discarded food and food-waste materials resulting from the handling, processing, storage and consumption of food.

“Glass Containers” means glass bottles, jugs and jars, but excludes window glass, drinking glasses, Pyrex and light bulbs.

“Hazardous Waste” means those wastes or substances defined in Wis. Admin. Code § NR 661.03 and also those solid wastes or substances found in household waste notwithstanding the household waste exclusion provided in Wis. Admin. Code § NR 661.04(2).

“Lead-Acid Batteries” means automotive and similar type batteries that are comprised of lead plates with an acid electrolyte.

“Major Appliance” means an air conditioner, clothes dryer, clothes washer, dishwasher, microwave oven, oven, refrigerator, freezer, stove, water heater, furnace, boiler or de- humidifier.

“Metal Can” means tin-coated steel can, bi-metal can, and aluminum can used for food and other non-hazardous materials but excluding cans that held paint, paint related products, pesticides or other toxic or hazardous substances.

“Non-Contaminated plastic bag” means any plastic bag that has not been in direct contact with, and does not remain soiled by, organic or non-organic materials. Plastic bags that contain any solid waste are contaminated for the purposes of this ordinance.

“Non-Recyclable” means solid waste other than recyclables, also referred to as trash.

“Non-Woody” vegetation means herbaceous soft and succulent plants. It includes annuals, biennials and perennials. It excludes shrubs, woody vines, trees and brush.

“Paper” means newspapers and their inserts, magazines, office paper, junk mail, flyers, envelopes, soft covered books and telephone books.

“Person” includes any individual, corporation, organization, association, business, partnership, LLC, state agency or authority or federal agency.

“Plastic bag” shall mean any bag intended for the transportation, storage, or protection of goods that is made, in part, of plastic film. A plastic bag is not the same as a plastic container, as that term is used elsewhere in this subsection.

“Plastic Container” means a plastic bottle, jar or jug marked with a Society of the Plastics Industry (SPI) Code 1 through 7 but does not include containers used for automotive oil or other hazardous substances.

“Recyclables” means paper, cardboard, glass, metal cans, plastic containers, tires and any other items as may be designated by the Public Works Committee.

“Recyclable plastic bag” means any plastic bag that is able to be recycled, or bundled for recycling purposes, in the Middleton area, and includes all those types of plastic bags set forth in this ordinance. Bags clearly labeled as biodegradable are not recyclable plastic bags.

“Single-Family Dwelling” means a residential dwelling place intended to be the residence of four or fewer independent family units. It includes individual homes, duplexes, triplexes and fourplexes.”

(3) City Collection Service. All persons within the City using City-provided curbside collection carts are eligible to receive collection service from the City or the City’s contracted collection provider. The City shall provide one set of collection carts consisting of one cart for recyclables and one cart for trash for properties within the City as follows:

| | |
|--------------------------------|--|
| Single- Family Dwellings ----- | one (1) set of carts per unit |
| Commercial/Industrial ----- | one (1) set of carts per business, but no more than four sets of carts per property. |
| Other ----- | one (1) set of carts per dwelling, but no more than four sets of carts per property. |

(4) Mandatory Separation for Curbside Collection.

(a) All persons generating waste within the City shall be required to separate recyclable materials from all other solid waste and shall be additionally required to ensure proper collection and disposal of solid waste in accordance with this section and any other applicable state, federal or county law by use of City collection services or private collection service.

(b) Persons using City-provided curbside solid waste collection service shall:

1. Place all recyclables and other solid waste materials in City-approved containers at curb side, or at other City designated collection points, no later than 6:00 AM on the day of collection.
2. Place no waste for collection other than solid waste generated on the premises for which City collection containers have been provided.
3. Separate all non-recyclable material from recyclable material and place the non-recyclable materials in containers approved for non-recyclable material.
4. Separate all recyclables from other solid waste and place them in approved recycling containers.
5. Arrange for separate collection of tires, bulk items and major-appliances according to procedures established by the Public Works Committee. Tires and major appliances will not be collected with other regularly collected solid waste.
6. Stack all brush separate from other material placed curbside for collection. Butt ends of brush shall be pointed toward the street or in the direction of vehicular travel.

(5) Plastic Bags.

(a) **Purpose.** By banning the disposal of noncontaminated recyclable plastic bags, the City hopes to reduce the negative impacts on the environment associated with plastic bags and to save space in the County landfill.

(b) **Every person disposing, or attempting to dispose of non-contaminated recyclable plastic bags in the City of Middleton shall separate such items from all other solid waste materials and not place them in containers for disposal with other garbage or recyclable materials.**

(c) **Non-contaminated recyclable plastic bags subject to this provision, and capable of being recycled, include:**

1. **Low density polyethylene bags (LDPE #4).** These bags are made of plastic films with high clarity, and moderate stretch and strength characteristics. Such bags include thicker newspaper bags and bread bags.

2. **Linear low density polyethylene bags (LLDPE #4).** These bags are made of plastic films with moderate clarity that are stretchy and have a slightly tacky feel. Such bags include clear and thin newspaper bags, as well as dry cleaning bags.

3. **Medium density polyethylene bags (MDPE #4).** These bags are made of plastic films with moderate clarity, and poor stretch and strength characteristics. Such bags include consumer packaging bags such as toilet paper and paper towel packaging.

4. **High density polyethylene bags (HDPE #2).** These bags are made of plastic films with some opacity that are crinkly to the touch, have low stretch and high strength characteristics, and are easily torn. Such bags include most grocery bags and retail bags.

(d) **Non-contaminated recyclable plastic bags shall be separated and recycled in accordance with the rules, procedures and schedules set forth in the City sponsored recycling program, or such items may be disposed of in any other lawful manner, including through merchant provided drop off locations. No person shall mix or permit the mixing of non-contaminated recyclable plastic bags with garbage or other solid waste in violation of such City rules, procedures or schedules.**

(e) **Enforcement.** No enforcement of this subdivision by the City will occur until the Public Works Committee establishes a City-sponsored recycling program for non-contaminated recyclable plastic bags. Such program shall be approved by the Common Council by resolution no later than December 1, 2011.

(6) Notification Required.

(a) Landlords shall notify all tenants upon move-in, and annually thereafter, of the City, County, and State recycling requirements and the City's solid waste collection requirements.

(b) Owners or occupants of commercial, retail, industrial and governmental facilities shall notify all users, including employees, agents and customers, of the City, County, and State recycling requirements.

(7) Prohibited Practices. No person shall:

(a) Deposit or cause to be deposited, any recyclable material in any container used for the collection of non-recyclable material.

(b) Deposit, or cause to be deposited, any non-recyclable material in any container used for the collection of recyclable material.

(c) Deposit any waste of any kind whatsoever in or on the property of others without the permission of the owner or lessee of said property.

(d) Place collection carts at the curb more than twelve (12) hours prior to the scheduled collection day. Carts must be removed from the public right-of-way within twelve (12) hours after collection.

(e) Place any materials for separate collection at curbside prior to making arrangements for their disposal.

(f) Dispose of any sharp medical waste such as needles or lancets in other than an approved medical waste box.

(g) Dispose of hazardous waste contrary to state and federal law.

(h) Place waste oil in recycling or trash containers or place waste oil at the curb for collection.

(i) Place lead acid batteries in recycling or trash containers or place lead acid batteries at the curb for collection.

(j) Deposit material in the City-provided collection carts in excess of the maximum weight load indicated on the cart.

(k) Place or permit to be placed any stumps, logs, or tree roots at the curbside for collection.

(l) Place or permit to be placed any brush or other yard waste generated by professional landscapers, tree-trimmers or similar businesses at the curbside for collection.

(m) Pilfer or disturb trash or recyclables once those materials are placed for collection except as necessary for City collection. This prohibition shall not apply to any owner or occupant of the property from which the waste was generated. Otherwise, all recyclable materials placed for collection pursuant to this ordinance shall become, upon placement, the property of the City or its authorized collector.

(8) Construction Debris Recycling. The holder of a building permit for a roofing or siding project in the City of Middleton shall recycle all construction debris generated on site as the result of such project. This subsection applies only to roofing or siding projects that require a building permit. This requirement shall not apply to materials contaminated in any manner as to render recycling illegal or impossible, or to materials that will not be accepted by any recycling facility within a forty (40) mile radius of the project site.

(a) **Definitions.** For purpose of this subsection, the following definitions apply:

“Construction debris” means materials resulting from the construction, remodeling, repair and demolition of any structure or building.

“Recycle” means to deposit material at a facility where materials are processed and returned to the economic mainstream in the form of raw materials or products.

“Roofing Project” means any construction of a new building or the remodeling or refurbishing of an existing building where roofing materials are removed or applied to the building.

“Siding Project” means any construction of a new building or the remodeling or refurbishing of an existing building where exterior siding materials are removed or applied to the building.

(b) **Director of Public Works to Administer.** The Director of Public Works shall be responsible for the administration of this subsection and is authorized to promulgate any policies, forms, practices or notices reasonably necessary to carry out this duty.

(c) **Records.** The holder of any building permit for a roofing or siding project shall retain for no less than two (2) years a weight ticket, receipt or other

independent proof demonstrating compliance with this subsection. As a further condition of said building permit, the Director of Public Works or the Building Inspector shall be permitted to inspect such records upon demand after reasonable notice in order to verify compliance.

- (d) **Enforcement.** In addition to the penalties set forth in Section 30.04, failure to comply with the recycling or reporting requirements of this subsection may result in the revocation of a building permit or the refusal to issue future building permits.

(9) Violations.

- (a) Any person who violates any provision of this section or any regulations promulgated pursuant to this section shall forfeit upon conviction thereof not less than \$25.00 nor more than \$500.00 for each separate offense. Each day or part thereof during which a violation occurs or continues to occur shall be deemed a separate offense. All forfeitures shall be double the amount listed if the violation involves hazardous waste.”

6.05 STORAGE AND ACCUMULATION OF JUNK.

No person, firm or corporation shall store or accumulate on vacant lots or lands within the City any automobile or boat not in running or operating condition, junk, salvage, building materials, old machinery or fencing materials unless such lots or lands are zoned to permit such accumulation or with the written permission of the Public Works Director. Whoever shall violate any of the provisions of this section shall be subject to a penalty as provided by section 30.04 of this Code. Each violation shall constitute a separate offense, and additionally each day of continuing violation shall constitute a separate offense.

6.06 DEPOSIT OF GARBAGE AND REFUSE CREATING A STENCH OR NUISANCE.

No person, firm, or corporation shall place or deposit on any sidewalk, gutter, street or alley, or upon any public or private grounds in the City or in any creek, pond, or other body of water in the City any garbage, dead animal offal, decayed meat, refuse, filth or any other substance that contaminates or tends to contaminate the waters, or that will cause destruction of any sidewalk, gutters, street or alley, or that will in any manner create any offensive or noisome stench or nuisance, or that will endanger or tend to endanger the public health; and the Public Works Director is empowered to summarily remove or cause to be removed any such garbage, dead animal offal, decayed meat, refuse, filth or other substance so placed or deposited contrary to the provisions of this section. Whoever shall violate any provision of this section shall be subject to a penalty as provided in section 30.04 of this Code. Each violation, and each day of continuing violation, shall constitute a separate offense.

6.07 REQUIRED VACCINATION OF DOGS AND CATS AND IMPOUNDMENT OF ANIMALS SUSPECTED OF BEING RABID.

(1) Vaccination Required. Every dog or cat owner residing in the City shall have each dog or cat owned by him or her inoculated with an avianized anti-rabid vaccine by a veterinarian before the date that the immunization expires as stated on the certificate of vaccination or, if no date is specified, within three (3) years after the previous vaccination.

(2) City Clerk Shall Provide Certificates and Tags. The County Clerk shall provide certificates of vaccination in triplicate form, for distribution to licensed veterinarians located within Dane County, Wisconsin. The certificates shall contain provisions for inserting information including: name and address of the dog or cat owner, date of vaccination, number of tag, breed, age, color and sex of the dog or cat, and such other information as may be required. The veterinarian shall be provided with a corresponding dog or cat tag of durable material to be attached to the collar or harness of the dog or cat as evidence of such inoculation and such tag shall be numbered and shall contain the year of issuance.

(3) Certificates. Each veterinarian, after inoculating a dog or cat, shall insert in a certificate the information required thereby and shall present one copy to the dog or cat owner and retain the remaining copy. The veterinarian shall also give the corresponding dog or cat tag to the dog or cat owner, which must be attached to the collar or harness of the dog and cat and must be worn by the dog or cat at all times.

(4) Dog or Cat Tags Required to be Worn. It shall be unlawful to own, harbor or keep any dog or cat over six (6) months of age which does not carry the dog or cat tag required by this section.

(5) Dogs or Cats Without Tags to be Impounded. Any police officer of the City may impound or cause to be impounded any dog or cat which does not carry the dog or cat tag as herein provided. The possession of any dog or cat so impounded or seized may be obtained by payment of a fee as set forth in the Fee Schedule under Section 3.12; provided, however that the impounded dog or cat shall not be released until proof has been furnished to the police officer that the dog or cat has been inoculated with anti-rabid vaccine in accordance with the terms of this section. After a dog or cat has been so impounded for a period of seven (7) days without it having been reclaimed by its owner or anyone on behalf of its owner, the dog or cat shall be turned over to the Dane County Humane Society. Notice of impounding shall be given by the officer as soon as possible after impounding to the owner of the dog or cat, if known.

(6) Impounding of Cats or Dogs and All Other Warm Blooded Animals for Protection Against Rabies.

(a) Any person owning, harboring, or keeping any dog or cat or any other warm blooded animal which has bitten any person, or is suspected of having rabies, shall immediately deliver and surrender said dog or cat or any other warm blooded animal to a Wisconsin licensed veterinarian and shall notify the Dane County Humane Society Officer or any law enforcement officer, of the reasons which lead him or her to surrender the animal to the veterinarian.

(b) Any person who has knowledge that any animal has rabies or has bitten a person shall immediately notify the owner, harborer, or keeper of such animal, if known, of the facts which formed the belief that the animal has rabies or of the identity of the person bitten, and the place, time and circumstances surrounding the biting and shall immediately notify the Humane Society Officer or a local enforcement officer of the description of the animal involved, the owner, harborer, or keeper, if known, the facts which formed the belief that the animal has rabies, or the identity of the person bitten and the place, time and circumstances surrounding the biting.

(c) A Police Officer who orders an animal impounded shall deliver the animal or shall order the animal delivered to a veterinary hospital in the County of Dane as soon as possible but no later than twenty-four (24) hours after the original order is issued.

(d) Alternatively, the officer may order the animal to be impounded on the premises of the owner upon the determination that the animal is currently immunized against rabies vaccination or other evidence. If an animal is ordered to be home impounded, the owner shall keep the animal under strict isolation under the supervision of a veterinarian for at least ten (10) days. The impoundment shall be at the animal owner's expense. Supervision of a veterinarian includes examination of the animal on the first day of impoundment, on the fourth, fifth or sixth day of impoundment and on the last day of impoundment.

(e) In cases of home impoundment, "strict isolation" shall be defined by the police department with additional special conditions as necessary in order to protect the public health, safety and welfare.

(7) Seizure Duties. It is the duty of the Dane County Humane Society officer or any law enforcement officer to seize any dog, cat, or other warm blooded animal which has bitten a person or which has contacted rabies, and deliver the same to any Wisconsin licensed veterinarian for a ten day observation period if:

(a) The dog, cat, or other warm blooded animal is not being owned, harbored, or kept by any person.

(b) The person owning, harboring or keeping the animal does not act as required in s. 6.07(6).

(8) Duties of the Veterinarian. Upon delivery of any such dog, cat, or other warm blooded animal to a veterinarian, the veterinarian shall:

(a) Impound the animal for ten (10) days observation.

(b) Examine the animal for rabies.

(c) Destroy the animal in a humane manner if the animal is infected with rabies.

(d) Determine whether it shall be necessary to have the animal's body taken to a laboratory facility for testing.

(e) Return the animal to the person owning, harboring, or keeping the animal, if the animal is not infected with rabies.

(f) Be entitled to a reasonable fee in the amount normally charged for boarding animals, and an additional reasonable fee for the destruction and disposal of the animal if the animal must be destroyed and disposed of. Such fees shall be paid by the person owning, harboring or keeping the animal. In the event the owner is not known, such fees shall be paid by the City.

(g) Send a written report of the findings to the Dane County Humane Society Officer, and the person owning, harboring, or keeping the animal or the officer who seized the animal.

(h) Turn over to the Dane County Humane Society any animal not claimed within five (5) days after submitting the written report.

(9) Report When Animal is Destroyed or Impounded. Any person, police officer or health officer who destroys or impounds any animal shall make a report to the Chief of Police stating when and under what conditions the seizure or impoundment of the animal occurred and the owner's name, if known.

(10) Penalty. Whoever violates any of the provisions of this section is subject to a penalty as provided in s. 30.04 of this Code.

6.08 DEFECATION OF ANIMALS ON PUBLIC PROPERTY.

(1) No person owning or having control of any animal shall suffer or permit such animal to defecate upon any public sidewalk, terrace, street, park or other public way without

immediately causing such defecation to be removed therefrom by burial or flushing in a toilet.

(2) Any person who violates any provision of this section is subject to a penalty as provided in s. 30.04 of this Code.

6.09 SMOKING PROHIBITED.

(1) Purpose. The Common Council finds that smoking tobacco products is hazardous to the health of both smokers and nonsmokers who are exposed to smoking. Reliable scientific studies, including studies conducted by the Surgeon General of the United States, have shown that breathing side-stream or secondhand smoke is a significant health hazard to nonsmokers, particularly to children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Health hazards induced by breathing side-stream or secondhand smoke include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction, and bronchospasam. This Section is adopted for the purpose of protecting the public health, general welfare, safety and comfort of the people of the City of Middleton.

(2) Definitions. In this section:

- (a) Except as otherwise provided herein, the definitions set forth in Wis. Stats. § 101.123 as in effect on July 5, 2010 are hereby adopted and incorporated by reference as if fully set forth herein.
- (b) “Service line,” means any area indoors or outdoors which is open to the public in which one (1) or more persons are waiting in line to purchase, order or otherwise receive a service or good of any kind, whether or not the service involves the exchange of money, including, but not limited to ATM lines, concert lines, food vendor lines, movie ticket lines and sporting event lines or waiting for public transportation. The term “service line” does not include lines in which people wait in their vehicle such as a line for drive-through service or car wash.”

(3) Prohibition of Smoking in Public Buildings. No person may smoke in any of the following places:

- (a) Anyplace where smoking is prohibited by Wis. Stats. § 101.123(2) as in effect on July 5, 2010.
- (b) Within fifteen (15) feet of any service line.

- (c) Any outdoor seating area provided for outdoor theater, concerts or similar events. Where such events do not provide specific seating areas, designated smoking areas shall be provided in a location reasonably removed from the main observation area.
- (d) Persons in charge of a restaurant, tavern, private club, or retail establishment may establish outside smoking areas where customers, employees, or persons associated with the restaurant, tavern, private club, or retail establishment may smoke. Such places shall be established a reasonable distance from any entrance, open window or vent leading inside the restaurant, tavern, private club or retail establishment.

(4) Exceptions. The prohibitions in subsection (3) shall not apply to any place identified in Wis. Stats. § 101.123(3) as in effect on July 5, 2010.

(5) Posting of Signs. Every public building shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. Every vehicle that constitutes a place of employment shall post a conspicuous sign likely to be seen by any occupant clearly stating that smoking is prohibited. Use of the international “No Smoking” symbol, a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across the cigarette, shall be construed as a clear statement that smoking is prohibited. The posting of signs is an affirmative duty upon the owner or operator of a public building, but failure of the owner or operator of a public building to post signs shall not be a defense to prosecution of a violation of this ordinance.

(6) Ashtrays. No ashtrays shall be present in any indoor area where smoking is prohibited by this Section except for ashtrays displayed for sale and not available for use on the premises.

(7) Retaliation; Waiver of Rights.

(a) No person or employer shall discharge, refuse to hire, refuse service to or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant or customer exercises any rights afforded by this Section, makes a complaint regarding any violation of this Section, or reports a violation of this Section to the City.

(b) An employee who works in a setting where an employer allows smoking contrary to this Section does not waive or otherwise surrender any rights the employee may have against the employer or any other party.

(8) Enforcement and Penalties.

(a) Any person found in violation of subsection (3) shall be subject to a forfeiture

not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00).

(b) Any owner, operator, or manager of a place where smoking is prohibited who observes a violation of this Section, shall immediately direct the person committing the violation to cease smoking and extinguish all smoking materials. If the person does not stop smoking, the owner, operator, or manager shall order the person to leave the premises. If the person fails to immediately leave the premises, the owner, operator, manager shall immediately call the City of Middleton Police Department. Any owner, operator, or manager or employee who fails to prevent violations of this ordinance as set forth in this paragraph or otherwise fails to comply with any provisions of this Section shall be subject to a forfeiture as follows:

1. Not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00) for the first violation within any twelve (12) month period.

2. Not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00) for the second violation within any twelve (12) month period.

3. Not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for the third violation within any twelve (12) month period.

(c) Each day a violation exists or occurs shall constitute a separate violation.

(d) Violation of this Section shall constitute grounds for the revocation or suspension of any license or permit issued under Chapter 7 of this Code of Ordinances related to the operation of the premises where smoking is prohibited.

(e) Violations of this Section shall be considered public nuisances and may be enjoined pursuant to Chapter 17 of this Code of Ordinances, Wis. Stats. Chap. 823 or by any other means authorized by law.

(9) Severability. If any portion, clause, sentence, or paragraph of this Section or the application thereof to any person, entity, or circumstances is held invalid, that invalidity shall not affect the other provisions of the Section which can be given effect without the invalid provision or application and to this end the provisions of this Section are declared to be severable.

This Ordinance shall become effective March 15, 2009 or upon publication whichever is later.

During the first nine (9) months after adoption of this ordinance the City shall waive all building permit fees for any application by any existing restaurant or tavern to construct an outdoor seating area to accommodate customers who wish to smoke.