

## **CHAPTER 30**

### **CONSTRUCTION AND EFFECT OF ORDINANCES**

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## CONSTRUCTION AND EFFECT OF ORDINANCES

### 30.01 RULES OF CONSTRUCTION.

In the construction of this code of general ordinances, the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the ordinance.

(1) Wisconsin Statutes. The term "Wisconsin Statutes" and its abbreviation as "Wis. Stats." shall mean, in this Code, the Wisconsin Statutes for the year 2009-2010, as amended from time to time. Future amendments shall be incorporated herein.

(2) Gender; Singular and Plural. Every word in this Code and in any ordinance importing the masculine gender may extend and be applied to females as well as males, and every word importing the singular number only may extend and be applied to several persons or things as well as to one person or thing; provided that these rules of construction shall not be applied to any provisions which shall contain any express language excluding such construction or when the subject matter or context of such provisions may be repugnant thereto.

(3) Person. The word "person" extends and applies to natural persons, firms, corporations, associations, partnerships or other bodies politic and all entities of any kind capable of being sued unless plainly inapplicable.

(4) Acts by Agents. When a provision requires an act to be done which may by law as well be done by an agent as by the principal, such requirement shall be construed to include all such acts when done by an authorized agent.

(5) City and State. Wherever the word "City" appears in this Code it refers to the City of Middleton, Dane County, Wisconsin, and wherever the word "State" appears it refers to the State of Wisconsin unless in either case the context clearly indicates otherwise.

### 30.02 CONFLICT AND SEPARABILITY.

(1) Conflict of Provisions. If the provisions of the different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions arising out of the subject matter of such chapter.

(2) Separability of Code Provisions. If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or

portion thereof. The Common Council of the City of Middleton hereby declares that they would have passed this Code and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional.

(3) Every provision of this Code shall be interpreted whenever reasonably possible to be consistent with any preemptive state or federal law, rule or regulation. It shall further be presumed that compliance with any preemptive state or federal law is an exception to any conflicting provision of this Code.

### **30.03 CLERK TO FILE DOCUMENTS INCORPORATED BY REFERENCE.**

Whenever in this Code any standard code, rule, regulation or other written or printed matter is adopted by reference, it shall be deemed incorporated in this Code as if full set forth herein and the City Clerk is directed and required to file, deposit, and keep in his or her office a copy of the code, standard, rule, regulation or other written or printed matter as adopted, except in such cases where another officer of the City has been specifically charged with the responsibility to file and maintain such document, in which case they shall do so to the standard above stated. Materials so filed, deposited and kept shall be public records open for examination with proper care by any person during the City's office hours, subject to such orders or regulations which the City Clerk may prescribe for their preservation.

### **30.04 PENALTY PROVISIONS.**

(1) General Penalty. Whenever so provided in this Code, any person who shall violate any provision of this Code shall upon conviction of such violation, be subject to a penalty, which shall be as follows:

(a) First Offense-Penalty. Any person who shall violate any provision of this Code subject to a penalty shall, upon conviction thereof, forfeit not more than \$3,500.00, together with the costs of prosecution and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the County Jail or county house of correction until said forfeiture and costs are paid, but not exceeding ninety (90) days.

(b) Any person found guilty of violating any provision of this Code who shall previously have been convicted of a violation of the same provision shall upon conviction thereof, forfeit not less than \$50.00 nor more than \$3,500.00 for each such offense, together with the costs of prosecution and in default of payment of such forfeiture and costs shall be

imprisoned in the County Jail until said forfeiture and costs of prosecution are paid, but not to exceed six (6) months.

(2) What Constitutes a Separate Offense. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Code shall preclude the City from maintaining any appropriate action to prevent or remove a violation of any provision contained in this Code.

(3) Execution Against Defendant's Property. Whenever any person fails to pay any forfeiture and costs of prosecution upon the order of the Court for violation of any ordinance of the City the Court may, in lieu of ordering imprisonment of the defendant, or after the defendant has been released from custody, issue an execution against the property of the defendant for said forfeiture and costs.

(4) Wherever abatement or similar remedy provided by this Code or State statute for any violation thereof, and the costs thereof are authorized to be charged to the violator or assessed to property as a special charge or special tax, such costs may include a charge for reasonable administrative costs, if any exist, relating to the investigation, documentation, coordination of abatement and billing in an amount determined by the head officer of the City department responsible for enforcement. Unless specifically provided such administrative charges shall not exceed 15% of the cost of abatement.

### **30.05 REPEAL OF GENERAL ORDINANCES.**

All ordinances heretofore adopted by the Common Council of the City of Middleton are hereby repealed, except all ordinances or parts of ordinances or resolutions relating to the following subjects and not conflicting with any of the provisions of this Code:

- Charter Ordinances
- The issuance of corporate bonds and notes of the City of Middleton of whatever name or description
- The establishment of grades, curb lines and widths of streets, sidewalks and alleys
- The fixing of salaries of public officials and employees
- Creating or abolishing offices
- Rights, licenses or franchises or the creation of any contract with the City of Middleton
- The lighting of streets and alleys
- The annexation of territory to the City of Middleton
- The naming and changing of names of streets, alleys, public grounds and parks
- The letting of contracts without bids
- The establishment of wards, ward boundaries and election precincts

- Tax and special assessment levies
- Release of persons, firms or corporations from liability
- Construction of any public works
- Water, sewer and electric rates, rules and regulations and sewer and water main construction
- Budget ordinances, resolutions and actions
- The Zoning Ordinance, which is reenacted with all amendments thereto

### **30.06 EFFECT OF REPEALS.**

The repeal or amendment of any section or provision of this Code or of any other ordinance or resolution of the Common Council shall not:

- (1) By implication be deemed to revive any ordinance not in force or existing at the time at which such repeal or amendment takes effect.
- (2) Affect any vested right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or amended, unless the privilege of repealing such obligation or privilege has been reserved by the City.
- (3) Affect any offense committed or penalty or forfeiture incurred, previous to the time when any ordinance shall be repealed or amended, except that when any forfeiture or penalty shall have been mitigated by the provisions of any ordinance, such provisions shall apply to and control any judgment to be pronounced after such ordinance takes effect for any offense committed before that time.
- (4) Affect any prosecution for any offense, or the levy of any penalty or forfeiture pending at the time when any ordinance aforesaid shall be repealed or amended, but the right of action shall continue and the offender shall be subject to the penalty as provided in such ordinances, and such prosecution shall proceed, in all respects, as if such ordinance or ordinances had not been repealed, except that all such proceedings had after the time this Code shall take effect, shall be conducted according to the provisions of this Code.

### **30.07 TITLE: EFFECTIVE DATE: CITATION.**

These ordinances shall be known as the "Municipal Code of the City of Middleton" and shall take effect from and after passage and publication as provided in Wis. Stat. s. 66.035. All references thereto shall be cited by section number (for example, section 13.06, Municipal Code, City of Middleton).

### **30.08 KEEPING CODE CURRENT.**

(a) **Revisor Appointed.** As each ordinance or resolution affecting the Code becomes effective, the City Clerk shall forward such ordinance or resolution to the Revisor, who shall incorporate the same into the Code. The Revisor shall make no substantive changes to such ordinances or resolutions but may renumber, rearrange and edit them without first submitting them to the Common Council; and such rearranging, renumbering and editing shall not affect the validity of such ordinances or resolutions or the provisions of the Code affected thereby.

(b) **Placement Upon City of Middleton Website.** All Ordinances shall be added to the official City of Middleton worldwide website no later than 60 days following publication under Section 30.09 of the Middleton General Ordinances.

### **30.09 PUBLICATION OF ORDINANCES.**

For purposes of fulfilling the publishing requirements of Wis. Stat. ss. 62.11 (4) (a) and Wis. Stat. Chapter 985, ordinances shall be published as follows:

- (1) Newly created ordinances shall be published in full.
- (2) Renumbered, renumbered and amended, amended, repealed and recreated ordinances shall be published as follows: only those sections, sub- sections and sub-subsections, etc., which contain changes shall be published except where the import and common sense meaning of the change is not readily discernible without reference to the preceding section or subsection, in which instances that portion or portions of the preceding section or sections sufficient to convey the import and common sense meaning of the change shall also be published.