

CHAPTER 38
(Revised 6-11-2009)
PUBLIC HEALTH NUISANCE

38.01 PUBLIC HEALTH NUISANCE. (1) Definitions Used in this Chapter. (a) Public Nuisance. A thing, act, condition or use of property which continues for such length of time as to:

1. Substantially annoy, injure or endanger the comfort, health, repose or safety of the public or to cause, or is known to have the potential to cause, a serious health hazard.

2. In any way render the public insecure in life or in the use of property.

(b) Human Health Hazard. "Human health hazard" means a substance, activity or condition that is known to have the potential to cause acute or chronic illness or death if exposure to the substance, activity or condition is not abated.

(c) Immediate Human Health Hazard. A condition that exists, or has the potential to exist, which should, in the opinion of the Health Officer, be abated or corrected immediately, or at least within a 24 hour period, to prevent possible severe damage to human health or the environment.

(d) Pollution. The contaminating or rendering unclean or impure the air, land or waters in the County, or making the same injurious to public health, harmful for commercial or recreational use or deleterious to fish, bird, animal or plant life.

(e) Toxic and Hazardous Materials. Any chemical or biological material that is stored, used or disposed of in such quantity or manner that it is or has the potential to create a public health hazard.

(f) Health Officer. "Health Officer" means the Brown County Public Health Department Director.

(2) Public Health Nuisance Prohibited. No person shall erect, create, cause, continue, maintain or permit any public nuisance within the County. Any person who shall cause, create or maintain a nuisance, or who shall, in any way, aid or contribute to the causing, creating or maintenance thereof, shall be guilty of a violation of this section and shall be liable for all costs and expenses attendant upon the removal and correction of such a nuisance and to the penalty provided in Sec. 38.03.

(3) Public Nuisances Affecting Health. The following acts, omissions, places, conditions and things are specifically declared to be public health nuisances coming within the definition of sub. (1).

(a) Unburied Carcasses. Carcasses or animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within 24 hours after death.

(b) Breeding Places for Vermin, etc. Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material in which flies, mosquitoes, disease carrying insects, rats or other vermin can breed.

(c) Water Pollution. The pollution of any well or cistern, stream, lake, canal or other body of water by sewage, industrial wastes, fertilizers and toxic pesticides, or other substances harmful to human beings.

(d) Noxious Odors, etc. Any use of property, substances or things within the County emitting or causing any foul, offensive, noisome, noxious or disagreeable odors, gases, effluent or stench extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injury or inconvenience the health of any appreciable number of persons within the County.

(e) Air Pollution. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the County in such quantities as to endanger the health of persons of ordinary sensibilities.

(f) Animal Waste. Accumulations of the bodily waste from all domestic animals and fowl that are handled, stored or disposed of in a manner that creates a health hazard to any appreciable number of persons within the County.

(g) Toxic and Hazardous Materials. Any chemical and/or biological material that is stored, used or disposed of in such quantity or manner that it is or has the potential to create a public health hazard.

(h) Wastewater. 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 on site waste disposal system or private sewage lateral connected to a public sewer system. Also any wastewater or sewage effluent that is not handled and disposed of in compliance with applicable county and State codes.

(i) Hazardous Conditions. All open and unguarded pits, wells, excavations, or unused basements freely accessible from any public street, alley, or sidewalk.

(j) Groundwater Pollution. Addition of any chemical or biological substance that would cause groundwater to be unpalatable or unfit for human consumption. These substances include, but are not limited to, the chemical and/or biological substances listed in Ch. NR 809, Wis. Adm. Code, titled, "Safe Drinking Water".

(4)(1) Definitions: (a) Noxious Odors, etc. Any use of property, substances or things within the County emitting or causing any foul, offensive, noisome, noxious or disagreeable odors, gases, effluent or stench extremely repulsive to the physical sense of ordinary persons which annoy, discomfort, injury or inconvenience the health of any appreciable number of persons within the County.

(b) Air Pollution. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the County in such quantities as to endanger the health of persons of ordinary sensibilities.

(c) Atmosphere. All space outside of buildings, stacks or exterior ducts.

(4)(2) Odor Violations. It shall be deemed an unlawful nuisance for any individual or business to cause or permit the emission of odorous air contaminants or particular air

contaminants from any source such as to result in detectable odors and/or particulate emissions within Brown County which leave the premises upon which they originated and which interfere with the reasonable and comfortable use and enjoyment of property.

(a) An odor shall be deemed to interfere with reasonable and comfortable use and enjoyment of property if it meets or exceeds any of the following limits:

(i) It is a violation to continuously emit particulate air contaminants above levels allowed in the U.S. EPA National Ambient Air Quality Standards (NAAQS) and/or Wisconsin Health Standards, whichever is more strict.

(ii) The Brown County Health Department shall issue a citation when the Health Department receives and verifies three (3) verifiable complaints from individuals representing separate properties within Brown County within an 8-hour period relating to a single odor description. The Health Department shall provide a designated phone number to call to report an odor complaint. The complaints shall be recorded by a staff member or by an electronic means and shall be considered as an individual odor complaint when the following information is provided:

- Name, address, and phone number of complainant.
- Time and date of call.
- Description of odor nuisance, including estimated location or source of complaint.

(4)(3) Exceptions. Violation of the odorous air contaminant standard may not be subject to penalty if any of the following circumstances exist:

(a) Temporary sources or events, such as rodeos, county fairs and stock shows;

(b) Odorous air contaminants existing solely within residences, or solely within commercial and industrial plants, works or shops, or to affect the relations between employers and employees with respect to or arising out of any condition of air pollution, provided that such odors do not penetrate the atmosphere and extend beyond the property boundary so as to become a public nuisance;

(c) The violator has made application to the Brown County Health Department, not less than 1 week prior to the violation, and such application has been approved, in writing, by the Brown County Health Department for a temporary exemption from Chapter 3801(4) of the Brown County Code;

(i) The approval of such application is subject to the sole discretion of the Brown County Health Department. A copy of the procedures and criteria is available upon request;

(4)(4) Penalties. The intention of this section is to act as a replacement of 38.03 Brown County Code, only as it pertains to violations and forfeitures under 38.01(4) Odor Violations;

(a) The forfeitures created under this section shall be graduated, and shall be cumulative for a 365-day period;

(i) For the purposes of calculation under this section, the tolling of the 365 day period shall commence the day after the occurrence of the violation which resulted in the initial forfeiture;

(b) Any individual or business who violates the provisions of 38.01(4) Brown County Code, upon conviction shall be subject to the following penalty;

(i) First violation: a forfeiture of not less than \$50.00 but not more than \$500.00, to be determined by the Brown County Health Department;

(ii) Second violation: occurring within a 365 day period of the first violation described in 38.01(4)(4)(b)(i); a forfeiture of not less than \$250.00 and not more than \$1,000.00 to be determined by the Brown County Health Department.

(iii) Third violation: occurring within a 365 day period of the first violation described in 38.01(4)(4)(b)(i) and subsequent violations; a forfeiture of not less than \$1,250.00 nor more than \$2,000.00 to be determined by the Brown County Health Department.

(c) Nothing in this section would preclude Brown County or other affected municipalities from taking necessary action in other forums to prevent further violations of this section.

(5) Coordination with State and other County, City, Village and Town Agencies. Where nuisances, as specified in subs. (1) and (3) of this section, involve a noncompliance with a State enforced Administrative Code, the Health Officer or his/her designee shall coordinate and/or refer this complaint to the appropriate State agency for abatement and/or correction. If the nuisance continues without adequate enforcement from the State agency to cause its abatement and/or correction, then the Health Officer or his/her designee may initiate action under this section to bring about abatement and/or correction in coordination with other county agencies and/or city, village and town enforcement agencies.

(6) Actions Against Agricultural Uses. No person or business shall be deemed in non-compliance of this section for violations arising from agricultural use of property in which the nuisance stems from the activities conducted in the normal course of agricultural business; on property under exclusive legal control of the individual or business; and prevention of such activity would hamper agricultural production;

(a) Agricultural use is defined as any tract of real property which issued to raise, harvest or store crops, feed, breed, or manage livestock, or to produce plants, trees, fowl, or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. It includes, but is not limited to, such real property used for agricultural, grazing, horticulture, forestry and dairying.

(i) such definition does not include industrial processing of agricultural products, refinement of agricultural products, or agricultural use that otherwise violates public health standards or Wisconsin Law;

(b) The intent of this section is not to be used as a restriction on zoning of property or limitations on use of private land. Local units of government are best equipped to resolve such use disputes through the powers enumerated in §823.08 Wis. Stats., and are best settled through the zoning process.

38.02 DESIGNATION OF UNFIT DWELLINGS. (1) Any dwelling or dwelling unit found to have any of the following defects shall be condemned as unfit for human habitation and shall be so designated and placarded by the Health Officer:

(a) One which is so damaged, decayed, dilapidated, unsanitary, unsafe or vermin infested that it creates a serious hazard to the health or safety of the occupants or of the public.

(b) One which lacks sanitation facilities adequate to protect the health or safety of the occupants or of the public.

(c) One which, because of its general condition or location, is unsanitary or otherwise dangerous to the health or safety of the occupants or of the public.

(d) One which, because of this condition, has been implicated as the source of a confirmed case of lead poisoning or asbestosis.

(2) No person shall continue to occupy, rent or lease quarters for human habitation which are declared unfit for human habitation by the Health Officer. For the purpose of this chapter, "unfit for human habitation" means lacking potable water or a properly functioning septic system, or an adequate and functioning heating system.

(3) Any dwelling or dwelling unit condemned as unfit for human habitation, and so designated and placarded by the Health Officer, shall be vacated within a reasonable time, as specified by the Health Officer.

(4) No dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by, the Health Officer. The Health Officer shall remove such placard whenever the defect or defects upon which the condemnation and placarding were based have been eliminated.

(5) No person shall deface or remove the placard from any dwelling or dwelling unit which has been condemned as unfit for human habitation.

(6) Any person affected by any notice or order relating to the condemning or placarding of a dwelling or dwelling unit as unfit for human habitation may request and shall be granted a hearing in the matter before the Health Officer.

(7) Whenever the Health Officer determines that a violation exists or has reasonable grounds to believe that there has been a violation of any provision of this section, or any rule or regulation adopted pursuant thereto, he/she shall give or cause to be given, notice of such violation or alleged violation to the person or persons responsible therefore, such notice shall be in writing including a description of the real estate involved, a statement of violations and corrective actions required, and allowing a reasonable time for the performance of any act required. Such notice shall be served upon the owner, operator or occupant as the case may require, and may be served by ordinary mail or in the manner provided by the Wisconsin Statutes for the service of summons. Such notice may contain an outline of remedial action which, if taken, will effect compliance with the provisions of this section and with rules and regulations adopted pursuant thereto. For each day which elapses after the allowance of a

reasonable time for the performance of corrective acts required or of any other acts of compliance, there is a violation which subjects the person, owner or occupant to forfeitures not less than \$5.00 per day, but not more than \$500 per day for the period such violations continue.

(8) Any person affected by any notice or order relating to a dwelling or dwelling unit under the provisions of this chapter may request, and shall be granted upon request, a hearing in the matter before the Board of Health.

38.03 PENALTY. Any person who violates any provision of this chapter, upon conviction, shall forfeit not less than \$5 nor more than \$500, together with the costs of prosecution. In default of payment such forfeiture and costs, the violator shall be imprisoned in the County jail not to exceed 90 days or until such forfeiture and costs are paid. This section shall not preclude the County from maintaining any appropriate action to prevent or remove a violation of this chapter.