

**CHAPTER 25
CONSTRUCTION AND EFFECT OF ORDINANCES**

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25.01 RULES OF CONSTRUCTION. In the construction of this Code, the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the ordinance:

- (1) **WISCONSIN STATES.** All references to "Wisconsin Statutes" or "Wis. Stats.," shall mean the Wisconsin Statutes for the years 1991-92 and shall include the 1993-94 biennial session.
- (2) **GENDER, SINGULAR AND PLURAL.** Every word in this Code and in any ordinance imparting the masculine gender may extend and be applied to females as well as males, and every word imparting the singular number only may extend and be applied to several persons or things as well as to one person or thing; provided these rules of construction shall not be applied to any provision which contains any express language excluding such construction or when the subject matter or context of such provision may be repugnant thereto.
- (3) **PERSON.** The word "person" extends and applies to natural persons, firms, corporations, associations, partnerships or other bodies politic and to all entities capable of being sued, unless plainly inapplicable.
- (4) **ACTS OF 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.

25.02 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 the Code is for any reason held to be invalid or unconstitutional by reason of any decision of 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 Board hereby declares that it would have passed this Code and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that anyone or more section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

25.03 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 fully set forth herein, and the Clerk shall file, deposit and keep in his office a copy of the Code, standard, rule, regulation or other written or printed matter as adopted. Materials so filed, deposited and kept shall be public records open for examination with proper care by any person during the Clerk's office hours, subject to such orders or regulations, which the Clerk may prescribe for their preservation.

25.04 PENALTY PROVISIONS.

- (1) **GENERAL PENALTY.** Except as otherwise provided, any person who shall violate any of the provisions of this Code shall, upon conviction of such violation, be subject to a penalty, which shall be as follows:
 - (a) **FIRST OFFENSE.** Any person who shall violate any provision of this Code shall, upon conviction thereof, forfeit not less than \$5 nor more than \$500, 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 until such forfeiture and costs are paid, but not exceeding 90 days.
 - (b) **SECOND OFFENSE.** Any person found guilty of violating any ordinance or part of an ordinance of this Code, who has previously been convicted of a violation of the same ordinance within one year shall, upon conviction thereof, forfeit not less than \$10 nor more than \$500 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 such forfeiture and costs are paid, but not exceeding 6 mos.

(2) **CONTINUED VIOLATIONS.** 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 of this Code.

(3) **EXECUTION AGAINST DEFENDANT'S PROPERTY.** Whenever any person fails to pay any forfeiture and costs of prosecution upon the order of any court for violation of any ordinance of the Town, 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 such forfeiture and costs.

(4) CITATIONS FOR ORDINANCE VIOLATIONS; CASH DEPOSITS. Pursuant to §66.119, Wis. Stats., the Town hereby elects to use the citation method of enforcement of ordinances other than those for which a statutory counterpart exists.

(a) INFORMATION REQUIRED. The municipal citation shall contain the following information:

1. Name and address of the alleged violator.
2. Factual allegations describing the alleged offense.
3. Time and place of the offense.
4. Section of the Code violated.
5. Designation of the offense in such manner as can readily be understood by a person making a reasonable effort to do so.
6. Time and place at which the alleged violator may appear in court.
7. A statement which in essence informs the alleged violator:
 - a. That a cash deposit, certified check or money order payable to the Town, based on the schedule established by this subsection may be made, which shall be delivered or mailed to the Chief of Police or the Town Clerk prior to the time of the scheduled court appearance.
 - b. That if the alleged violator makes such deposit, he need not appear in court unless subsequently summoned.
 - c. That if the alleged violator makes a cash deposit in the form as herein provided and does not appear in court, either he or she will be deemed to have tendered a plea of no contest or a summons will be issued commanding him to appear in court to answer the complaint.
 - d. That if no cash deposit is made and the alleged violator does not appear in court at the time specified, an action may be commenced to collect the forfeiture.
8. A direction that if the alleged violator elects to make a cash deposit, the statement which accompanies the citation shall be signed to indicate that the statement required under par. 7. above has been read. Such statement shall be sent or brought with the cash deposit.
9. Such other information as the Town deems necessary.

(b) FORM OF CITATION. The form of citation to be used by the Town is on file in the office of the Chief of Police and Town Clerk and is hereby adopted by reference as though fully set forth herein.

(c) SCHEDULE OF DEPOSITS. The schedule of cash deposits is established for use with citations issued under this section shall be as adopted by the Town Board from time to time, and such schedule shall be on file in the offices of the Chief of Police and Town Clerk. In addition, penalty assessments and court costs shall be added to the cash deposit, which penalty assessment and courts costs are determined in accordance with the deposit schedule established and adopted by the Wisconsin Judicial Conference. Any change in the penalty assessment or court costs by the Wisconsin Judicial Conference or the Circuit Court of Waukesha County shall be put into effect by the Town Board by resolution in lieu of an amendment to this section.

(d) FORM OF DEPOSITS. Deposits shall be in cash, money order or certified check to the Town Clerk or the Clerk of Municipal Court, who shall provide a receipt therefor.

(e) PROCEDURE. Section 66.119(3), Wis. Stats., relative to violator's options and procedure on default, is hereby adopted and incorporated herein by reference.

(f) NONEXCLUSIVITY.

1. **Other Ordinance.** This section does not preclude the Town Board from adopting any other ordinance or providing for the enforcement of any law or ordinance relating to the same or other matters.
2. **Other Remedies.** The issuance of a citation hereunder shall not preclude the Town or any authorized officer from proceeding under any other ordinance or law or by any other enforcement method to enforce any ordinance, regulation or order.

25.05 REPEAL OF GENERAL ORDINANCES. All ordinances previously adopted by the Town Board are hereby repealed, except all ordinances or parts of ordinances relating to the following subjects and not conflicting with any of the provisions of this Code:

- (1) The issuance of corporate bonds and notes of the Town of whatever name or description.
- (2) The establishment of grades, curb lines and widths of sidewalks in the public streets and alleys.
- (3) The fixing of salaries of public officials and employees.
- (4) Rights, licenses, franchises or the creation of any contract with the Town.
- (5) The lighting of streets and alleys.

- (6) The naming and changing of names of streets, alleys, public grounds and parks.
- (7) The letting of contracts without bids.
- (8) The establishment of wards, ward boundaries and election precincts.
- (9) Tax and special assessment levies.
- (10) Releases of persons, firms, or corporations from liability.
- (11) Construction of public works.
- (12) Water, sewer and electric rates, rules and regulations, and sewer and water main construction.
- (13) Budget ordinances, resolutions and actions.
- (14) The Town Zoning Ordinance, Chapter 17 of this Code, which was adopted by the Town Board on June 17, 1958, and approved by the Waukesha County Board on June 17, 1958, together with all amendments thereto, shall remain in full force and effect.
- (15) The Town Ordinance Regulating the Division and Platting of Land, Chapter 18 of this Code, which was adopted by the Town Board on September 22, 1959, together with all amendments thereto, shall remain in full force and effect.

25.06 EFFECT OF REPEALS. The repeal or amendment of any section or provision of this Code, or of any other ordinance or resolution of the Board, shall not:

- (1) By implication be deemed to revive any ordinance not in force or existing at the time 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 Town.
- (3) Affect any offense committed, or penalty or forfeiture incurred, previous to the time when any ordinance is repealed or amended; except when any forfeiture or penalty has 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 above is repealed or amended; but the right of action shall continue and the offender shall be subject to the penalty as provided in such ordinance, and such prosecution shall proceed, in all respects, as if such ordinance had not been repealed; except all such

proceedings had after the time this Code takes effect shall be conducted according to the provisions of this Code.

25.07 TITLE - EFFECTIVE DATE OF CITATION. These ordinances shall be known as the "General Code of the Town of Brookfield, Wisconsin," and shall take effect from and after passage and publication as provided in §66.035, Wis. Stats. All references thereto shall be cited by section number (example: §13.06, General Code of the Town of Brookfield).

25.08 KEEPING CODE CURRENT - REVISOR'S AMENDMENTS. As each ordinance or resolution affecting the Municipal Code becomes effective, the Town Clerk shall forward such ordinance or resolution to the Revisor, who shall incorporate them into the General Code. The Revisor shall make no substantive changes to such ordinances and resolutions, but may renumber, rearrange and edit them without first submitting them to the Town Board; and such rearranging, renumbering and editing shall not affect the validity of such ordinances and resolutions Or the provisions of this General Code affected thereby.

25.10 PROCESS OF AMENDING, REPEALING AND RECREATING ORDINANCES.

(1) Prior to being approved by the Town Board, all new, amended or repealed ordinances shall have at least two readings of the proposed ordinance. The purpose of the following process of amending, repealing and recreating ordinances of the Town of Brookfield is to provide its citizens ample opportunity to comment