

CHAPTER 23

OFFENSES AGAINST PUBLIC POLICY

Section

- 23.01 Regulating of Public Work. (Retitled by Ord. 4504, 3-6-74)
- 23.02 Advertisements on Public or Private Property Prohibited.
- 23.03 Election Practices Prohibited.
- 23.04 Distribution of Commercial Handbills and Advertising Matter Prohibited.
- 23.05 Smoking Prohibited in Certain Areas. (Cr. by Ord. 5140, 9-5-75; Am. by Ord. 12,571, 5-3-00)
- 23.06 Damage to Property. (R./ReCr. by Ord. 11,377, 10-23-95)
- 23.065 Scratchiti. (Cr. by ORD-06-00032, 4-7-06)
- 23.07 Unlawful Trespass.
- 23.08 Hours of Operation for Payday Loan Businesses. (Cr. by Ord. 13,498, 1-23-04)
- 23.09 Representing That Profit From Sale of Merchandise Inures to Charitable Organizations Prohibited.
- 23.10 Report of Removal of Personal Property to be Made to Chief of Police.
- 23.11 Minors Under Seventeen Not to be Allowed on Streets After Certain Hours.
- 23.12 Transient Hotels & Motels Regulated. (Cr. by ORD-08-00028, 3-15-08)
- 23.13 Automobiles Not to be Rented to Minors.
- 23.14 Automobiles Not to be Rented to any Person Without a Driver's License.
- 23.15 Ticket Scalping Prohibited. (Cr. by Ord. 6199, 3-24-78)
- 23.16 Regulating and Controlling Uniforms of Private Police, Security Guards, Couriers and Other Similarly Uniformed Persons. (Cr. by Ord. 7548, 10-29-81)
- 23.17 Billiard Halls Closing Hours.
- 23.18 Cruelty to Animals.
- 23.185 Harassment of Police Animals Prohibited. (Cr. by Ord. 10,513, 9-24-92)
- 23.19 Destruction of Birds Prohibited.
- 23.20 Regulations Concerning Marijuana and Cannabis. (Cr. by Ord. 5833, 4-18-77)
- 23.201 Possession of Drug Paraphernalia. (Cr. by Ord. 10,594, 2-26-93)
- 23.21 Pruning or Removing Trees in Public Highways or Public Places.
- 23.22 Planting of These Trees in Public Highway.
- 23.23 Depositing Materials Near Trees.
- 23.24 Breaking, Damaging or Injuring Trees, Shrubs. (Am. by Ord. 10,848, 2-28-94; ORD-10-00071, 7-27-10)
- 23.25 Attaching Electric Wires, Etc., to Trees.
- 23.26 Tall Barberry and Purple Barberry Prohibited.
- 23.27 Cotton Bearing Poplar Trees Restricted. (Am. by Ord. 4667, 8-5-74)
- 23.28 Seed Bearing Box Elder Trees Restricted. (Am. by Ord. 4666, 8-5-74)
- 23.29 Noxious Weeds.
- 23.30 Maintenance of Barbed Wire Fences.
- 23.31 Animals Not to be Permitted to Run at Large.
- 23.315 Animals Prohibited During Street Use Permit Event. (Cr. by ORD-10-00079, 8-12-10)
- 23.32 Regulation of Dogs and Cats Running at Large. (Am. by Ord. 11,549, 3-14-96)
- 23.33 Animal Control Officer to be Appointed to Seize and Impound Animals. (Am. by Ord. 9643, 12-6-88)
- 23.34 Madison Established As Nuclear Free Zone. (Cr. by Ord. 8169, 12-2-83)
- 23.35 Permitting Animal to Cause Injury. (Cr. by Ord. 9642, 12-6-88)
- 23.36 Glass-Free Zone (Cr. by Ord. 13,438, 10-24-03)
- 23.37 Interfering With Breastfeeding Prohibited. (Cr. by ORD-07-00012, 2-2-07)
- 23.375 Prohibition Against Professional Strikebreakers.
- 23.38 Purchase or Possession of Tobacco Products by Children Prohibited. (Am. by Ord. 10,586, 1-29-93; 8-13-93)

Section

- 23.385 Restrictions on Sale or Gift of Cigarettes or Tobacco Products. (Cr. by Ord. 10,708, 8-13-93)
- 23.39 Vaccination of Dogs and Cats Required.
- 23.40 Elm Trees Infected With Dutch Elm Disease or Oak Trees Infected with Oak Wilt Disease or Ash Trees Infested with Emerald Ash Borer a Nuisance. (Am. by Ord. 13,540, 6-23-04; ORD-09-00115, 8-11-09)
- 23.41 Use of DDT Spray Prohibited.
- 23.42 Unlawful Removal of Parking Tickets.
- 23.43 Unlawful Sheltering of Minors.
- 23.44 Consumer to be Offered Selection of Containers.
- 23.45 Truancy and Habitual Truancy. (Cr. by Ord. 10,181, 1-17-91; Am. by Ord. 12,525, 1-21-00)
- 23.46 Unauthorized Presence on School Property Prohibited.
- 23.47 Reserved For Future Use.
- 23.48 Public Utilities to Provide Notice of Proposed Service Disconnections. (Cr. by Ord. 4971, 5-16-75)
- 23.49 Possession of Exotic or Wild Animals. (Cr. by Ord. 13,328, 5-28-03)
- 23.495 Exhibition of Certain Animals. (Cr. by Ord. 13,328, 5-28-03)
- 23.50 Sale of Certain Turtles Prohibited.
- 23.51 Playing Golf on School Property Prohibited. (Cr. by Ord. 4665, 8-5-74)
- 23.52 Reserved For Future Use.
- 23.53 Telephone Number to be on Unattended Vending Machines. (Cr. by Ord. 6040, 11-16-77)
- 23.54 Retail Theft. (Cr. by Ord. 10,980, 9-14-94)
- 23.55 Reserved For Future Use.
- 23.56 Private Parking Enforcement Regulated. (Cr. by Ord. 11,088, 12-6-94)
- 23.565 Vehicle Immobilization Application Fee Administrative Appeal. (Cr. by Ord. 12,042, 3-2-98)
- 23.57 Compliance Inspection Fees. (Cr. by ORD-10-00058, 6-11-10)
- 23.58 - 23.59 Reserved For Future Use.
- 23.60 Penalties for Violation of This Chapter.

23.01 REGULATING OF PUBLIC WORK. (Retitled by Ord. 4504, 3-6-74)(1) Wage Rates for Employees of Public Works Contractors.

- (a) General and Authorization. Every contract for public works issued by the City of Madison shall contain Section 23.01(1) of these Ordinances and shall require the contractor to compensate its employees at the prevailing wage rate in accordance with Wis. Stat. § 66.0903, Wis. Admin. Code ch. DWD 290 and as hereinafter provided.

This ordinance shall apply to all contracts for public works regardless of the value of the contract. This ordinance shall not apply to: a project of public works in which the labor for the project is provided by unpaid volunteers; warranty work; or work under a supply or installation contract. Notwithstanding Wis. Stat. § 66.0903(5), this ordinance shall apply to bid public works contracts for minor services and maintenance work, as defined in such statute.

“Public works” shall include building or work involving the erection, construction, remodeling, repairing or demolition of buildings, parking lots, highways, streets, bridges, sidewalks, street lighting, traffic signals, sanitary sewers, water mains and appurtenances, storm sewers, and the grading and landscaping of public lands.

“Building or work” includes construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work, except for the delivery of mineral aggregate such as sand, gravel, bituminous asphaltic concrete or stone which is incorporated into the work under contract with the City by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

“Erection, construction, remodeling, repairing” means all types of work done on a particular building or work at the site thereof in the construction or development of the project, including without limitation, erecting, construction, remodeling, repairing, altering, painting, and decorating, the transporting of materials and supplies to or from the building or work done by the employees of the contractor, subcontractor, or agent thereof, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work, by persons employed by the contractor, subcontractor, or agent thereof.

“Employees working on the project” means laborers, workers, and mechanics employed directly upon the site of the work.

“Laborers, workers, mechanics and truck drivers” includes subjourneypersons and properly registered and indentured apprentices but excludes clerical, supervisory, and other personnel not performing manual labor. (Am. by Ord. 12,150, 6-26-98)

This is a Charter Ordinance and shall be effective upon sixty (60) days from passage and publication subject, however, to the referendum procedures of Wis. Stat. § 66.0101(5). (Am. by CHA-10-00001, 5-14-10)

- (b) Establishment of Wage Rates. The City of Madison has been granted exemption from applying to the Wisconsin Department of Workforce Development (DWD) for determination of prevailing wage rates in accordance with Wis. Stat. § 66.0903(3). The Department of Public Works shall periodically obtain a current schedule of prevailing wage rates from DWD. The schedule shall be used to establish the City of Madison Prevailing Wage Rate Schedule for Public Works Construction (prevailing wage rate). The Department of Public Works may include known increases to the prevailing wage rate which can be documented and are to occur on a future specific date. Upon approval by the Common Council, the prevailing wage rate shall be included in public works contracts subsequently negotiated or solicited by the City. Except for known increases contained within the schedule, the prevailing wage rate shall not change during the contract. (Am. by Ord. 12,150, 6-26-98)
- (c) Workforce Profile. The contractor shall, at the time of signature of the contract, notify the City Engineer in writing of the names and classifications of all the employees of the contractor, subcontractors and agents proposed for the work. In the alternative, the contractor shall submit in writing the classifications of all the employees of the contractor, subcontractors and agents and the total number of hours estimated in each classification for the work. This workforce profile(s) shall be reviewed by the City Engineer who may, within ten (10) days, object to the workforce profile(s) as not being reflective of that which would be required for the work. The contractor may request that the workforce profile, or a portion of the workforce profile, be submitted after the signature of the contract but at least ten (10) days prior to the work commencing. Any costs or time loss resulting from modifications to the workforce profile as a result of the City Engineer’s objections shall be the responsibility of the contractor.
- (d) Payrolls and Records. The contractor shall keep weekly payroll records setting forth the name, address, telephone number, classification, wage rate and fringe benefit package of all the employees who work on the contract, including the employees of the contractor’s subcontractors and agents. Such weekly payroll records must include the required information for all City contracts and all other contracts on which the employee worked during the week in which the employee worked on the contract. The contractor shall also keep records of the individual time each employee worked on the project and for each day of the project. Such records shall also set forth the total number of hours of overtime credited to each such employee for each day and week and the amount of overtime pay received in that week. The records shall set forth the full weekly wages earned by each employee and the actual hourly wage paid to the employee.

The contractor shall submit the weekly payroll records, including the records of the contractor's subcontractors and agents, to the City engineer for every week that work is being done on the contract. The submittal shall be within twenty-one (21) calendar days of the end of the contractor's weekly pay period.

Employees shall be paid unconditionally and not less often than once per week. Employees shall receive the full amounts accrued at the time of the payment, computed at rates not less than those stated in the prevailing wage rate and each employee's rate shall be determined by the work that is done within the trade or occupation classification which should be properly assigned to the employee.

An employee's classification shall not be changed to a classification of a lesser rate during the contract. If, during the term of the contract, an employee works in a higher pay classification than the one which was previously properly assigned to the employee, then that employee shall be considered to be in the higher pay classification for the balance of the contract, receive the appropriate higher rate of pay, and she/he shall not receive a lesser rate during the balance of the contract. For purposes of clarification, it is noted that there is a distinct difference between working in a different classification with higher pay and doing work within a classification that has varying rates of pay which are determined by the type of work that is done within the classification. For example, the classification Operating Engineer provides for different rates of pay for various classes of work and the employer shall compensate an employee classified as an operating engineer based on the highest class of work that is done in one day. Therefore, an operating engineer's rate may vary on a day to day basis depending on the type of work that is done, but it will never be less than the base rate of an operating engineer. Also, as a matter of clarification, it is recognized that an employee may work in a higher paying classification merely by chance and without prior intention, calculation or design. If such is the case and the performance of the work is truly incidental and the occurrence is infrequent, inconsequential and does not serve to undermine the single classification principle herein, then it may not be required that the employee be considered to be in the higher pay classification and receive the higher rate of pay for the duration of the contract. However, the contractor is not precluded or prevented from paying the higher rate for the limited time that an employee performs work that is outside of the employee's proper classification.

Questions regarding an employee's classification, rate of pay or rate of pay within a classification, shall be resolved by reference to the established practice that predominates in the industry and on which the trade or occupation rate/classification is based. Rate of pay and classification disputes shall be resolved by relying upon practices established by collective bargaining agreements and guidelines used in such determination by appropriate recognized trade unions operating within the City of Madison.

The contractor, its subcontractors and agents shall submit to interrogation regarding compliance with the provisions of this ordinance.

Mulcting of the employees by the contractor, subcontractor and agents on public works contracts, such as by kickbacks or other devices, is prohibited. The normal rate of wage of the employees of the contractor, subcontractors and agents shall not be reduced or otherwise diminished as a result of payment of the prevailing wage rate on a public works contract.

- (e) Hourly Contributions. Hourly contributions shall be determined in accordance with the prevailing wage rate and with Wis. Admin. Code § DWD 290.01(10).
(Am. by Ord. 12,150, 6-26-98)
- (f) Apprentices and Subjourneypersons. Apprentices and subjourneypersons performing work on the project shall be compensated in accordance with the prevailing wage rate and with Wis. Admin. Code §§ DWD 290.02 and DWD 290.025, respectively.
(Am. by Ord. 12,150, 6-26-98)

- (g) Straight Time Wages. The contractor may pay straight time wages as determined by the prevailing wage rate and DWD 290.04, Wis. Admin. Code.
(Am. by Ord. 12,150, 6-26-98)
- (h) Overtime Wages. The contractor shall pay overtime wages as required by the prevailing wage rate and DWD 290.05, Wis. Admin. Code.
(Am. by Ord. 12,150, 6-26-98)
- (i) Posting of Wage Rates and Hours. A clearly legible copy of the prevailing wage rate, together with the provisions of Sec. 66.0903(10)(a) and (11)(a), Wis. Stats., shall be kept posted in at least one conspicuous and easily accessible place at the project site by the contractor and such notice shall remain posted during the full time any laborers, workers or mechanics are employed on the contract.
(Am. by Ord. 12,150, 6-26-98)
- (j) Evidence of Compliance by Contractor. Upon completion of the contract, the contractor shall file with the Department of Public Works an affidavit stating:
 - a. That the contractor has complied fully with the provisions and requirements of Sec. 66.0903(3), Wis. Stats., and Chapter DWD 290, Wis. Admin. Code and Sec. 23.01, Madison General Ordinances; the contractor has received evidence of compliance from each of the agents and subcontractors; and the names and addresses of all of the subcontractors and agents who worked on the contract.
(Am. by Ord. 12,150, 6-26-98)
 - b. That full and accurate records have been kept, which clearly indicate the name and trade or occupation of every laborer, worker or mechanic employed by the contractor in connection with work on the project. The records shall show the number of hours worked by each employee and the actual wages paid therefore; where these records will be kept and the name, address and telephone number of the person who will be responsible for keeping them. The records shall be retained and made available for a period of at least three (3) years following the completion of the project of public works and shall not be removed without prior notification to the municipality.
- (k) Evidence of Compliance by Agent and Subcontractor. Each agent and subcontractor shall file with the contractor, upon completion of their portion of the work on the contract an affidavit stating that all the provisions of Sec. 66.0903(3), Wis. Stats., and Sec. 23.01, Madison General Ordinances, have been fully complied with and that full and accurate records have been kept, which clearly indicate the name and trade or occupation of every laborer, worker or mechanic employed by the contractor in connection with work on the project. The records shall show the number of hours worked by each employee and the actual wages paid therefore; where these records shall be kept and the name, address and telephone number of the person who shall be responsible for keeping them. The records shall be retained and made available for a period of at least three (3) years following the completion of the project of public works and shall not be removed without prior notification to the municipality.
- (l) Failure to Comply with the Prevailing Wage Rate. If the contractor fails to comply with the prevailing wage rate or this ordinance, s/he shall be in default on the contract.”
(Subsections (1), (2), (3), (4), (5) R. & Re-Cr. as Subsection (1) by Ord. 10,447, Adopted 5-19-92)

- (4) Reserved for Future Use. (R. by CHA-07-00001, 2-22-07)

This is a Charter Ordinance and shall be effective upon sixty (60) days from passage and publication subject, however, to the referendum procedures of Sec. 66.0101(5), Wis. Stats.

(Sec. 23.01(8) Cr. by Charter Ord. 55, 2-25-83)

(Sec. 23.01(8) Renumbered to (4) by Ord. 10,447, Adopted 5-19-92)

23.02 ADVERTISEMENTS ON PUBLIC OR PRIVATE PROPERTY PROHIBITED.

- (1) No person, firm, corporation or organization shall place or cause to be placed in any manner any commercial, political or promotional advertising material upon any public property or public telephone booth in any street, alley or public grounds, or upon the exterior of any private property situated and fixed in or adjacent to any street, alley or public ground, unless proper sign permits, permission from the lawful owner or occupant of the premises where such material is to be displayed provided such signs are not otherwise prohibited by ordinance, or Council approval therefore is obtained. This prohibition shall include but not be limited to the placement in any manner of any advertising material upon trees. The placement prohibition shall not apply to placement of posters on kiosks, bulletin boards or other designated locations designed for said activity which are located upon public or private property. (Am. by Ord. 5572, 8-25-76 and Ord. 5573, 9-3-76)
- (2) No person, firm, corporation or organization shall place any commercial advertising material upon any private property except in compliance with the following:
- (a) Any plastic bag used in distribution shall be a minimum of 1mm in thickness and shall have a minimum of twenty (20) holes, each at least one-fourth (1/4) inch in diameter;
 - (b) No toxic material or material injurious to health shall be distributed;
 - (c) All unclaimed material shall be collected by the distributor or her/his agent by 6:00 p.m. on the day following the day of distribution;
 - (d) No distribution of such material shall be made to any private dwelling if the owner or occupant thereof gives notice in any reasonable manner that s/he does not wish to receive such material;
 - (e) Every distribution of commercial advertising material shall include the name, address, and telephone number of person, firm, corporation or organization responsible for such distribution.
- (3) This section shall not apply to the posting of notices required by law nor to materials distributed through the mail.
- (4) The provisions of this ordinance shall be severable and if any part of the ordinance shall be held in contravention of the Constitution and laws of the State of Wisconsin and the United States by a court of competent jurisdiction, the validity of the rest of the ordinance shall not be affected. It is hereby declared to be the intent of this ordinance that the same would have been adopted had such unconstitutional or unlawful portion, if any, not been included herein. (Cr. by Ord. 5512, 6-19-76)
- (5) Any person who violates any provision of this section, or fails to comply with any of its requirements shall upon conviction thereof, be subject to a forfeiture of not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200). (Am. by Ord. 5557, 8-13-76; Ord. 13,760, Adopted 12-14-04)

23.03 ELECTION PRACTICES PROHIBITED.

- (1) Electioneering Prohibited. It shall be unlawful during voting hours on any public property on the day of any election within a radius of one hundred (100) feet of any entrance to any building containing any polling place within the City of Madison, for any person to engage in any electioneering or to distribute, place or cause to be distributed any written or printed matter, or to maintain, present or display any visible or audible announcement or advertisement in any form whatsoever, which is intended or tends to influence, directly or indirectly, the vote for or against any candidate or referendum question. This subsection does not apply to the placement of any material on the bumper of a motor vehicle that is located on such property on election day. (Am. by Ord. 10,920, 5-27-94)
- (2) Reserved for Future Use. (R. by Ord. 10,920, 5-27-94)
- (3) Loud Speakers Prohibited. It shall be unlawful during voting hours on the day of any election for any person to use or operate or cause to be used or operated any device, apparatus or instrument for the amplification of the human voice or any sound or noise, which amplification is directed to the general public and which is intended or tends to influence, directly or indirectly, the vote for or against any candidate or referendum question.
- (4) Any person convicted of violating this section shall be subject to a forfeiture of not less than fifty dollars (\$50) nor more than two hundred dollars (\$200).

23.04 DISTRIBUTION OF COMMERCIAL HANDBILLS AND ADVERTISING MATTER PROHIBITED.

- (1) It shall be unlawful for any person, firm or corporation to distribute or to cause or permit to be distributed in any public street or park thereof in the City of Madison any commercial handbills, samples, or advertising matter of any kind.
- (2) It shall be unlawful for any person, firm, or corporation, except the owner, to place or cause to be placed in or upon any automobile standing on the streets, alleys, or public places in the City of Madison for advertising purposes any commercial handbill, dodger, card, pamphlet, sticker, tag, or paper of any kind.

23.05 SMOKING PROHIBITED IN CERTAIN AREAS.(1) Definitions.

"Bed and breakfast establishment " has the meaning set forth in sec. 254.61(3), Wis. Stats. This definition shall become effective July 1, 2005. (Cr. by Ord. 13,604, 5-11-04)

"Childcare facility" means any state licensed or county certified child care facility including, but not limited to licensed family day care or licensed group day care centers, licensed day camps, certified school-age programs and Head Start programs.

"Chewing tobacco" means plug and twist tobacco; fine cut and other chewing tobaccos; snuff, snuff flour, cavendish, plug and twist tobacco; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing. (Cr. by ORD-06-00033, 4-7-06)

"Cigarette" means any roll of tobacco wrapped in paper or any substance other than chewing tobacco or tobacco products. (Cr. by ORD-06-00033, 4-7-06)

"City buildings" means all City-owned and operated buildings and those portions of buildings leased and operated by the City. (Cr. by Ord. 12,832, 6-6-01)

"Common areas of buildings" means all areas not part of a tenant's leased premises, including but not limited to lobbies, community rooms, hallways, laundry rooms, stairwells, elevators, enclosed parking facilities, pool areas, and restrooms contiguous thereto. This definition shall become effective July 1, 2005. (Cr. by Ord. 13,604, 5-11-04)

"Common areas of malls" means those areas within a mall customarily accessible to patrons. (Cr. by Ord. 12,571, 5-3-00)

"Educational Facility" means any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board. (Cr. by Ord. 11,091, 12-22-94)

"Employee" means any person who is employed by any employer for direct or indirect monetary wages or profit, including those full time, part-time, temporary or contracted for from a third party; employee also means any person who serves as a volunteer for a business or nonprofit entity.

"Employer" means any person, partnership, limited liability company, corporation, or other entity, including a public or non-profit entity who employs the services of one (1) or more individual persons.

"Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from floor to ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, 'other landscaping' or similar structures. (Cr. by Ord. 12,571, 5-3-00)

"Entrance" means a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk or parking lot. (Cr. by Ord. 12,832, 6-6-01)

"Food" means a raw, cooked , or processed edible substance or ingredient used or intended for use or for sale in whole or in part for human consumption. It does not include ice, beverage or chewing gum. (Cr. by ORD-06-00033, 4-7-06)

"Health Care Facility" has the meaning set forth in Sec. 155.01(6), Wis. Stats. (Cr. by Ord. 12,571, 5-3-00)

"Hotel and motel" has the meaning set forth in sec. 254.61(3), Wis. Stats.

"Mall" means an enclosed, indoor area containing common areas and discrete businesses primarily devoted to the retail sale of goods and services. (Cr. by Ord. 12,571, 5-3-00)

"Medical Services" has the meaning set forth in Sec. 647.01(6), Wis. Stats. (Cr. by Ord. 12,571, 5-3-00)

"NonSmoking" means smoking is prohibited. (Cr. by Ord. 12,571, 5-3-00)

"Person in Charge" means the person who ultimately controls, governs or directs the activities aboard a public conveyance or within or at a place where smoking is regulated under this section, regardless of the person's status as owner or lessee. (Cr. by Ord. 12,571, 5-3-00)

“Place of employment” means an enclosed area controlled by the employer, which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a ‘place of employment’ within the meaning of this ordinance unless used as a childcare facility.

“Private Club” means an organization, whether incorporated or not, which is the owner, lessee or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain and which only sells alcohol beverages incidental to its operation. The affairs and management of the private club are conducted by a board of directors, executive committee or similar body chosen by the members at an annual meeting. The private club has established bylaws and/or a constitution to govern the club’s activities. The private club has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C.A. section 501. This definition shall become effective July 1, 2005. (Cr. by Ord. 13,604, 5-11-04)

“Private residence” means premises owned, rented or leased for temporary or permanent habitation. (Cr. by Ord. 12,571, 5-3-00)

“Public place” means any enclosed area to which the public is invited or in which the public is permitted. A private residence is not a public place. (Cr. by Ord. 12,571, 5-3-00)

“Restaurant” means an establishment defined in Wis. Stat. § 254.61(5), whose sale of alcohol beverages accounts for fifty percent (50%) or less of the establishment’s gross receipts of the most recent alcohol licensing year, but does not mean churches, religious, fraternal, youth or patriotic organizations, service clubs and civic organizations which prepare and serve or sell meals to members and guests only. This includes restaurants within a mall and adjacent seating. This definition is effective January 2, 2003. (Am. by Ord. 11,558, 3-29-96, 4-4-96; Ord. 13,195, 12-10-02)

“Retail tobacco store” means a retail establishment that does not have a “Class B” intoxicating liquor license or a Class “B” fermented malt beverages license and that generates 75 percent or more of its gross annual income from the retail sale of tobacco products and accessories. (Am. by ORD-10-00067, 7-13-10)

“Room” means a space within a building completely enclosed with walls, partitions, floor and ceiling, except for openings for light, ventilation, ingress and egress.

“School Board” means the school board in charge of the public schools, grades K-12, of a school district. (Cr. by Ord. 11,091, 12-22-94)

“Smokefree” means absence from the ambient air of the smoke by-product from the burning, inhaling, exhaling, or carrying of a lighted cigarette, cigar, pipe, weed, plant, or other combustible substance in any manner in any form.

“Smoking” means to smoke or carry a lighted pipe, cigar, cigarette or tobacco-related products in any form.

“Sports Arena” means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and indoor ice rinks, and bowling centers. This definition shall become effective on July 1, 2005. (Cr. by Ord. 13,604, 5-11-04)

“Tavern” means any establishment with a full service bar in which fermented malt beverages or intoxicating liquors are sold for consumption upon said premises and whose sale of alcohol beverages accounts for more than fifty percent (50%) of the establishment’s gross receipts of the most recent licensing year as specified in Chapter 38 of these ordinances. This definition is effective January 2, 2003. (Am. by Ord. 11,558, 3-29-96, 4-4-96; Ord. 13,195, 12-10-02)

“Tobacco bar” means a tavern, which generates fifteen percent (15%) or more of its total annual gross income from the on-site sale of cigars and tobacco for pipes, not including any sales from vending machines. (Cr by ORD-06-00033, 4-7-06; Am. by ORD-10-00067, 7-13-10)

“Tobacco Product” means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such a manner, as to be suitable for smoking in a pipe or otherwise smoking; but “tobacco product” does not include cigarettes or chewing tobacco. (Cr. by Ord. 12,571, 5-3-00; Am. by ORD-06-00033, 4-7-06)

“Use Tobacco Products” means to consume by means other than smoking including, but not limited to, the chewing, spitting, swallowing, snorting, inhaling or ingesting of any tobacco product. (Cr. by Ord. 10,679, 6-11-93)

(Sec. 23.05(1) Am. by Ord. 10,531, 12-30-92; Ord. 12,571, 5-3-00; Ord. 12,938, 12-11-01 Am. by ORD-10-00067, 7-13-10)

(2) Intent and Purpose.

(a) The Common Council of the City of Madison hereby finds that:

1. It is recognized that smoking of cigarettes and tobacco products is hazardous to an individual’s health and may affect the health of nonsmokers when they are involuntarily in the presence of smoking.
2. Numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution.
3. Reliable scientific studies, including studies conducted by the Surgeon General of the United States, have shown that breathing sidestream 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.
4. Health hazards induced by breathing sidestream or secondhand smoke include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction and bronchospasm.
5. Reliable scientific studies assessed by the California Environmental Protection Agency have found that sidestream and secondhand tobacco smoke is a leading cause of premature death and disability among non-smokers.
6. Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort to nonsmokers.

(b) This ordinance is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of the City of Madison, especially recognizing the rights of nonsmokers who constitute a majority of the population; educating citizens affected by this ordinance; and assisting owners, operators; and managers in maintaining compliance.

(Sec. 23.05(2) Am. by Ord. 12,571, 5-3-00)

(3) Prohibition of Smoking in Public Places. Except as otherwise provided, it shall be unlawful for any person to smoke or use tobacco products in public places, including but not limited to the following:

- (a) Elevators and enclosed stairwells of City parking ramps. (Am. by Ord. 11,327, 8-11-95)
- (b) Public forms of transportation, including but not limited to motor buses, taxicabs, or other public passenger vehicles. (Am. by Ord. 10,983, 9-14-94)
- (c) Theatres, libraries, museums, auditoriums, and convention halls, which are used by or open to the public. (Am. by Ord. 13,604, 5-11-04)
- (d) Any childcare facility. Incorporated herein by reference are the following Wisconsin statutory and administrative code sections and any amendments or renumbering thereof: Sec. 101.123(1)(ad) and (2)(bm), Wis. Stats; Secs. HFS 45.02(4), 45.06(8)(g), 46.03(13), 46.06(2)(h), and 46.08(2)(c), Wis. Admin. Code. (Am. by Ord. 11,091, 12-22-94)

- (e) Retail stores.
 - (f) Health care facilities. (Am. by Ord. 6208, 3-29-78; Ord. 12,571, 5-3-00)
 - (g) Waiting rooms, hallways, rooms of health care laboratories.
 - (h) Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider.
 - (i) Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political or social purposes. (Am. by Ord. 5694, 12-28-76; Ord. 12,571, 5-3-00)
 - (j) Polling places. (Am. by Ord. 12,571, 5-3-00)
 - (k) Service lobbies, waiting areas, and the common areas open to the public of financial institutions, business and professional offices, and multi-unit commercial facilities. (Cr. by Ord. 5694, 12-28-76)
 - (l) Self-service laundry facilities. (Cr. by Ord. 5694, 12-28-76)
 - (m) Enclosed, indoor areas of restaurants. (Am. by Ord. 11,558, 3-29-96, 4-4-96; Ord. 12,571, 5-3-00; Ord. 13,195, 12-10-02; Ord. 13,604, 5-11-04)
 - (n) Common areas of malls. (Cr. by Ord. 10,199, 2-14-91; Am. by Ord. 12,571, 5-3-00)
 - (o) Public bus and transfer point shelters. (Cr. by Ord. 10,615, 3-31-93; Am. by Ord. 12,571, 5-3-00)
 - (p) Common areas of buildings which contain three or more rental units. Written Rental Agreements shall include reference to this subdivision. Subsection (9)(b) shall not apply to this subdivision. (Cr. by Ord. 10,237, 4-12-91; Am. by Ord. 12,923, 11-23-01; Ord. 13,604, 5-11-04)
 - (q) City buildings. (Am. by Ords. 10,633 & 10,634, 4-16-93; Ord. 10,656, 5-29-93; Ord. 10,895, 5-2-94; Ord. 12,571, 5-3-00; Ord. 12,794, 4-9-01; Ord. 12,832, 6-6-01)
 - (r) City-owned or leased motor vehicles. (Cr. by Ord. 10,247, 4-26-91; Am. by Ord. 12,571, 5-3-00)
 - (s) Sports arenas. (Cr. by Ord. 13,195, 12-10-02; R. by Ord. 13,604, 5-11-04)
 - (t) Taverns. (Cr. by Ord. 13,604, 5-11-04)
 - (u) All areas in bed and breakfast establishments, hotels and motels. (Cr. by Ord. 13,604, 5-11-04; Am. by ORD-10-00067, 7-13-10)
- (Sec. 23.05(3) Am. by Ord. 10,679, 6-11-93; Am. by Ord. 12,571, 5-3-00; Am. by Ord. 12,938, 12-11-01)
- (4) Prohibition of Smoking in Outdoor Areas. It shall be unlawful for any person to smoke or use tobacco products in the following outdoor areas.
- (a) Outside the City-County Building:
 1. Between the public sidewalk and the Martin Luther King, Jr. Boulevard side of the building including but not limited to the entrance steps, the planters, and all cement areas adjacent to the building;
 2. Between the public sidewalk and the West Wilson Street side of the building, including but not limited to the entrance steps, the planters, and all cement areas adjacent to the building.
- (Cr. by Ord. 11,023, 10-31-94; Am. by Ord. 12,794, 4-9-01)
- (b) Outside the Bernard Schwab Building of the Madison Public Library, known as the Central Library, between the front entrance of the library and the public sidewalks on the Fairchild Street and the Mifflin Street sides of the building including but not limited to the entrance steps, the planters, and all cement areas adjacent to the building. (Cr. by Ord. 12,167, 7-20-98)

- (c) In addition to Subdivisions (a) and (b), outside at least one entrance to all City buildings.
1. Within forty-five (45) days of adoption of this subdivision, all current employees of each City building shall designate, by majority vote, which entrance(s) shall be smokefree.
 2. No more than one entrance may be designated as a smoking area.
 3. This subsection shall be effective sixty (60) days after publication.

(Cr. by Ord. 12,832, 6-6-01)

- (d) City parks and beaches as posted and so designated by the Park Commission. (Cr. by Ord. 12,784, 3-28-01; Renumbered by Ord. 12,832, 6-6-01)

(Former Sec. 23.05(3)(s) Am. and Renum. to Sec. 23.05(4) by Ord. 12,571, 5-3-00)

- (5) Prohibition of Smoking in Educational Facilities. It shall be unlawful for any person to smoke or otherwise use any tobacco products:

- (a) In all educational facilities and in or upon all other premises owned, rented by or under the control of a school board.
- (b) In or upon all premises of the Madison Area Technical College, including all buildings owned or operated by the district for the primary purpose of vocational, technical or adult education. This includes outdoor areas between the public sidewalks and buildings.

(Am. by Ord. 11,091, 12-22-94; Am. and Renum. by Ord. 12,571, 5-3-00; Am. by Ord. 12,938, 12-11-01; Ord. 13,510, 2-10-04)

- (6) Prohibition of Smoking in Places of Employment

- (a) It shall be unlawful for any person to smoke or otherwise use any tobacco products in all places of employment.
- (b) Every building which is a place of employment shall have at least one entrance which is smokefree. For buildings with fewer than four (4) entrances, no more than one entrance may be designated as a smoking entrance. For buildings with four (4) or more entrances, no more than 25% of all entrances may be designated as a smoking entrance.
- (c) Each employer, operator, manager, lessee or other person having control of the place of employment shall make reasonable efforts to ensure a smokefree workplace for all employees and frequenters.
- (d) Within ninety (90) days of the effective date of this ordinance, each employer having a place of employment located within the City of Madison shall adopt, implement and communicate written notice of the provisions of this ordinance to each employee.
- (e) Reserved for Future Use. (R. by ORD-10-00067, 7-13-10)
- (f) Reserved for Future Use. (R. by ORD-10-00067, 7-13-10)

(New Sec. 23.05(6) Cr. by Ord. 12,938, 12-11-01)

- (7) Exceptions. The following areas shall not be subject to the smoking restrictions of this section:

- (a) Retail tobacco stores in existence on June 3, 2009 and in which only the smoking of cigars and pipes is allowed.
- (b) Tobacco bar, subject to the following:
 1. The Tobacco bar was in existence on June 3, 2009;
 2. Smoking of tobacco products is permitted;
 3. Smoking of cigarettes and service of food are not permitted;
 4. Fifteen percent (15%) or more of the tobacco bar's total gross income from the previous fiscal year was from the on-site sale of tobacco products, not including any sales from vending machines;

5. To qualify for this exemption the owner must file written proof subscribed and sworn to by a Certified Public Accountant certifying the tobacco bar's total gross income and the percentage of tobacco product sales from the tobacco bar. The City Clerk or City Attorney may request further information, including an audit of the tobacco bar's records, if there is reason to believe the financial data may not be accurate;
6. This exemption is only in effect from the date of initial application until June 30, and then from July 1 to June 30, of each year. An application for this exemption must be made annually by April 15th of the application year. To qualify for an annual exemption the tobacco bar must provide written proof subscribed to and sworn by a Certified Public Accountant certifying that fifteen percent (15%) or more of the tobacco bar's total gross income from the preceding year was from the on-site sale of tobacco products, not including any sales from vending machines;
7. Tobacco bars shall display signs, in accordance with the standards in this section, that state that cigars and pipes may be smoked in the tobacco bar, that cigarettes may not be smoked in the tobacco bar, and warning of the dangers of secondhand smoke, in language and form as approved by the Director of Public Health.

(Am. by ORD-06-00033, 4-7-06; Rep. 28.05(7)(a) & Renum. (b)-(f) to (a)-(e) by ORD-09-00147, 11-6-09; Rep. Sec. 28.05(7)(b), (c), 9d) and Renum. (e) to (b) by ORD-10-00067, 7-13-10)

(Sec. 23.05(7) Am. by Ord. 12,571, 5-3-00; Renum. from 23.05(6) & Am. by Ord. 12,938, 12-11-01; Am. by Ord. 13,195, 12-10-02; Ord. 13,604, 5-11-04; ORD-10-00067, 7-13-10)

(8) Signage.

- (a) Signs prohibiting, prohibiting except in designated areas, or permitting smoking, as the case may be, shall be posted conspicuously at every building, structure, or public place entrance and in prominent locations throughout the premises by the proprietor, employer or other person in charge of each building, structure or public place specified in Subsections (3), (4), (5) and (6). Signs in outdoor areas designated as nonsmoking shall be placed so that the public has reasonable notice of the prohibition. (Am. by Ord. 12,938, 12-11-01)
- (b) Restaurants and taverns shall post, in a conspicuous place at each entrance normally used by the public, a sign not smaller than eleven by eight and one-half inches (11" x 8 ½") indicating whether they permit smoking or whether they are smokefree. Each sign and the language contained therein shall be clearly visible from a distance of at least ten (10) feet. The signage lettering shall be in bold and the lettering shall be a minimum of two (2) inches in height. Each sign shall contain the phone number for the City health department and the non-emergency number for the City police department. (Renumbered by Ord. 12,796, 4-9-01; Am. by Ord. 13,604, 5-11-04)
- (c) It shall be unlawful for any person to remove, deface, or destroy any sign required by this Section, or to smoke in any place where any such sign is posted. (Renumbered by Ord. 12,796, 4-9-01)
(Am. and Renumbered by Ord. 12,571, 5-3-00; Am. and Renumbered by Ord. 12,938, 12-11-01)

(9) Enforcement.

- (a) The Director of Public Health or designee and the Chief of Police or designee, shall have the power, whenever they may deem it necessary, to enter upon the premises named in this section to ascertain whether the premises are in compliance with this ordinance. A compliance time of not less than one week shall be granted. Enforcement may be by citation, as permitted by Sec. 1.08, MGO, or through issuance of a summons and complaint. (Renum. and Am. by Ord. 10,163, 12-28-90; Renumbered and Am. by Ord. 12,571, 5-3-00)
- (b) The proprietor, employer or other person in charge of premises regulated hereunder, upon either observing or being advised of a violation, shall make reasonable efforts to prevent smoking in prohibited areas by:
1. Approaching smokers who fail to voluntarily comply with this section and requesting that they extinguish their cigarette or tobacco product and refrain from smoking, or
 2. Refusing service to anyone smoking in a prohibited area.
- (Cr. by Ord. 12,796, 4-9-01)
- (c) Any person who desires to register a complaint under this section may contact the Department of Public Health or the Police Department.
- (d) Ashtrays, cigarette vending machines and other smoking paraphernalia shall not be located in areas where smoking is prohibited.

(Am. and Renum. by Ord. 12,571, 5-3-00; Am. and Renum. by Ord. 12,938, 12-11-01)

- (10) Retaliation Prohibited. No person shall discharge, refuse to hire, refuse to serve or in any other manner retaliate against any employee, applicant for employment, customer, service user, business patron or any other person because that person exercises any rights afforded by this section. (Cr. by Ord. 12,938, 12-11-01)

(11) Violations and Penalties.

- (a) General. Any person who violates any of the provisions of this section may be subject to a forfeiture of no more than one hundred and twenty-five dollars (\$125) for the first offense and no more than five hundred dollars (\$500) for the second and subsequent offenses. Each day that a violation occurs shall be considered a separate offense.

(Sec. 23.05(8) Renumbered to (9) and Am. by Ord. 12,571, 5-3-00; Ord. 12,795, 4-9-01; Renumbered to (11) by Ord. 12,938, 12-11-01; Ord. 13.604, 5-11-04]

(12) Clean Indoor Air.

- (a) Intent and Construction. The City of Madison finds that it is in the interests of the health, safety and welfare of the community to adopt by reference Wis. Stat. § 101.123, and subsequent amendments, additions and recodifications. It is the intent of the Common Council that where there may be conflict between Wis. Stat. § 101.123 and Sec. 23.05, MGO, that the most restrictive section shall apply. This ordinance shall not be construed to mean that progressive discipline of City employees for violations of laws, rules, and regulations is only authorized where explicitly provided by ordinance.
- (b) Penalty. The penalties provided by Wis. Stat. § 101.123 shall be in addition to the penalties provided for violation of Sec. 23.05 when a person has violated both laws. In addition to the penalties provided by Sec. 23.05 and Wis. Stat. § 101.123, any City employee who violates any provision of Sec. 23.05 or Wis. Stat. § 101.123, may also be subject to progressive discipline by his or her employer.

(Sec. 23.05(9) Renumbered to (10) by Ord. 10,163, 12-28-90; Renumbered to (12) and Am. by Ord. 12,938, 12-11-01)

- (13) Severability. The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared to be the intent of the Common Council that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein. (Cr. by Ord. 11,558, 3-29-96, 4-4-96; Renumbered to (13) by Ord. 12,938, 12-11-01)
- (14) Notwithstanding any other provision of the Madison General Ordinances, the City Attorney is authorized to institute and prosecute actions seeking to enjoin repeated violations of this section. (Cr. by ORD-10-00067, 7-13-10)

23.06 DAMAGE TO PROPERTY.

- (1) Definitions. In this section:
- (a) “Intentionally” shall mean that the actor either has a purpose to do the thing or cause the result specified, or is aware that her or his conduct is practically certain to cause that result. In addition, the actor must have knowledge of those facts which are necessary to make their conduct unlawful and which are set forth after the word “intentionally”.
- (b) “Graffiti” shall mean any writing, printing, marks, signs, symbols, figures, designs, inscriptions, or other drawings which are scrawled, painted, drawn or otherwise placed on any surface of a building, wall, fence, sidewalk, curb or other structure on public or private property which have the effect of defacing the property, but shall not include scratchiti as defined in Section 23.065. (Am. by ORD-06-00032, 4-7-06)
- (2) It shall be unlawful for any person to intentionally cause damage to any physical property of another without the person's consent.
- (3) If more than one item of property is damaged under a single intent and design, the damage to all of the property may be prosecuted as a single offense.
- (4) In any case of unlawful damage involving more than one act of unlawful damage, but prosecuted as a single offense, it is sufficient to allege generally that unlawful damage to property was committed between certain dates. At the trial, evidence may be given of any such unlawful damage that was committed on or between the dates alleged.
- (5) It shall be unlawful for any person to intentionally place graffiti on any surface located on public or private property.

- (6) This section does not prohibit any person from using water soluble chalk to mark words or figures, otherwise lawful, upon city pavement and sidewalks.
 - (7) Any person who shall violate this section shall be subject to a forfeiture of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). (Am. by Ord. 13,760, Adopted 12-14-04)
- (Sec. 23.06 R./ReCr. by Ord. 11,377, 10-23-95)

23.065 SCRATCHITI.

- (1) Definitions. In this section:
 - (a) “Intentionally” shall mean that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result. In addition, the actor must have knowledge of those facts that are necessary to make their conduct unlawful and which are set forth after the word “intentionally.”
 - (b) “Scratchiti” shall mean any writings, printings, marks, signs, symbols, figures, designs, inscriptions, or other drawings that are etched, carved, scratched, or engraved on any surface of a building, wall, fence, sidewalk, curb, window or other structure on public or private property that has the effect of defacing the property, but shall not include "graffiti" as defined in Section 23.06.
 - (c) “Etching acid” shall mean any liquid, cream, paste or similar chemical substance that can be used to etch, draw, carve, sketch, engrave or otherwise alter, change or impair the physical integrity of glass, metal or other hard surface.
- (2) It shall be unlawful for any person to intentionally place scratchiti or etching acid on or into any surface located on public or private property without the consent of the owner of the property.
- (3) Any person who shall violate Subsection (2) shall be subject to a forfeiture of not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000).

(Cr. by ORD-06-00032, 4-7-06)

23.07 UNLAWFUL TRESPASS.

- (1) It shall be unlawful for any person to intentionally enter the dwelling of another without the consent of some person lawfully upon the premises, under circumstances tending to create or provoke a breach of the peace.
- (2) It shall be unlawful for any person to enter or remain on any property of another or to enter or remain in any building of another after having been notified by the owner or occupant not to enter or remain on such premises.
- (3) It shall be unlawful for any person to enter or remain in a health care facility or to enter or remain on property on which a health care facility is located after having been notified by the owner or occupant not to enter or remain on such premises. In this section a “health care facility” means a hospital, clinic or office that is used by a licensed physician. Where an office used by a health care facility is located in a multi-office building, the common areas of the entire building shall also be deemed a health care facility.

- (4) This section does not prohibit any person from participating in lawful conduct in labor disputes under Wis. Stat. §103.53.
- (5) It shall be unlawful for any person to permit any animal belonging to that person, or under that person's control, to trespass upon the property belonging to another person without the permission of the lawful owner or occupant.
- (6) No person shall possess or consume any amount of an alcoholic beverage, whether in an open or closed container, on the property of another without the permission of a person lawfully upon the premises. (Cr. by Ord. 10,924, 6-17-94)
- (7) (a) No person shall sleep, lie down or take temporary habitation on the property of another without the permission of a person lawfully upon the premises.
- (b) No person shall possess or use items commonly associated with sleeping or habitation, including but not exclusively, beds, mattresses, sleeping bags, bedrolls, blankets, pillows, sheets, quilts and comforters on the property of another without the permission of a person lawfully upon the premises. (Cr. by Ord. 10,924, 6-17-94)
- (8) (a) It shall be unlawful for any person, other than a licensee or authorized newspaper reporters or those connected with or employed upon the railroad, to walk, loiter or be upon or along the track of any railroad. The provisions of this subsection shall not be construed to interfere with the lawful use of a public road or highway by any person, or to prevent any person from driving across any railroad from one part of the person's land to another part thereof, or from walking directly across the tracks or right-of-way or track by any person when occasioned by or in connection with, either directly or indirectly, the shipping, loading or unloading of freight, seeking employment, the investigation or securing of evidence with respect to any accident or wreck, or in conducting or transacting any other business for or with said railroad; or with the entry of any employee during or on account of labor disputes by employees.
- (b) No person shall be cited for nor convicted of a violation of Subsection (8)(a) unless Notices have been conspicuously posted in the immediate area in which such person is trespassing or has trespassed and said notices substantially contain the provisions of Subsection (8)(a) and the penalties for violating that subsection.
- (Cr. by Ord. 12,325, 2-26-99)
- (9) It shall be unlawful for any person, other than those actually engaged in maintenance or other work activities, to enter, be upon or cross the full right-of-way width of North Paterson Street from the end of the improved street to the waters edge of Lake Mendota from sunset to sunrise. (Cr. by Ord. 13,236, 2-25-03)
- (10) Any person violating any of the provisions of Subsections (1) or (2) of this section shall be subject to a forfeiture of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500); any person violating any provision of Subsection (3) of this section shall be subject to a forfeiture of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1000); any person violating any provision of Subsection (5) or (9) of this section shall be subject to a forfeiture of not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200); and any person violating any of the provisions of Subsections (6) or (7) or (8) of this section shall be subject to a forfeiture of not more than three hundred dollars (\$300). (Am. by Ord. 11,621, 6-13-96; Am. and Renumbered by Ord. 13,236, 2-25-03; Ord. 13,760, 12-14-04; ORD-10-00063, 6-23-10)

(Sec. 23.07 Am. by Ord. 10,326, 11-14-91)

23.08 HOURS OF OPERATION FOR PAYDAY LOAN BUSINESSES.

- (1) Intent and Purpose. It is the purpose of this ordinance to regulate the hours of operation of all payday loan businesses. The majority of existing payday loan businesses, as defined in Section 28.03(2), are located near residential areas, where business hours may impact the residents of the area. Payday loan businesses, like other financial businesses, do not provide services that must be available at hours other than normal business hours. This ordinance is deemed for the benefit of the health, safety and welfare of the public. (Am. by Ord. 13,619, 5-11-04)
- (2) Hours of Operation. No payday loan business may be open between the hours of 9:00 p.m. and 6:00 a.m.

(Cr. by Ord. 13,498, 1-23-04)

23.09 REPRESENTING THAT PROFIT FROM SALE OF MERCHANDISE INURES TO CHARITABLE ORGANIZATIONS PROHIBITED. No person, firm or corporation shall hereafter sell upon the public streets of the City of Madison or go from place to place in and about said City soliciting orders or otherwise attempting to sell merchandise from house to house or place to place who shall represent in connection with said sales that any portion of the profit of said sale or any portion of the money received for the sale of any article so sold, will be donated to any charitable institution.

23.10 REPORT OF REMOVAL OF PERSONAL PROPERTY TO BE MADE TO CHIEF OF POLICE.

- (1) Every person who shall remove household effects or business equipment of another between any two points within the City limits shall except as hereinafter provided, file with the Chief of Police the name of the owner of the effects or equipment so removed and the house number and street, or depot from which and to which such removal was made, and the date of such removal. Such reports shall be filed with the Chief of Police within forty-eight (48) hours after such removal, on blanks furnished by the City Clerk. The provisions of this section shall not extend to or include the removal of household effects or business equipment in trunks, satchels or valises.
- (2) All such reports shall be kept on file in the office of the Chief of Police, who shall transcribe the records of all such removals and record the same alphabetically in a book for that purpose. Such records shall contain the name of the person, firm, or corporation so removed and the address from which and to which removed, together with the date of such removal.

23.11 MINORS UNDER SEVENTEEN NOT TO BE ALLOWED ON STREETS AFTER CERTAIN HOURS.

- (1) Definitions.

“Curfew Hours” means the following times:

- (a) From eleven o’clock (11:00) p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until four o’clock (4:00) a.m. of the following day, and
- (b) From twelve o’clock (12:00) a.m. until five o’clock (5:00) a.m. on any Friday or Saturday.

“Custodian” means a person at least eighteen (18) years of age who has been authorized by a parent or guardian to have the care and custody of the juvenile.

“Juvenile” means any person who is at least twelve (12) years of age but less than seventeen (17) years of age. (Am. by Ord. 13,760, Adopted 12-14-04)

“Organized Dance” means any school, church or non-profit sponsored dance, which has qualified for an exception under Madison General Ordinance Section 9.03(2).

- (2) It shall be unlawful for any juvenile to be upon the streets or alleys or public places within the City of Madison during curfew hours.
- (3) The following are exceptions to subsection (2):
 - (a) The juvenile was accompanied by his or her parent, legal guardian, or custodian, or
 - (b) The juvenile was attending an organized dance, or
 - (c) The juvenile was exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech or the right to assembly.

- (d) The juvenile was returning directly to his or her residence from his or her place of employment. (Cr. by ORD-09-00081, 5-21-09)
- (e) The juvenile was attending an organized school activity. (Cr. by ORD-09-00081, 5-21-09)
- (f) The juvenile was attending an official faith-based group or community-based group event. (Cr. by ORD-09-00081, 5-21-09)
- (4) It shall be unlawful for any parent, legal guardian or custodian to knowingly cause or permit a juvenile to be in violation of this ordinance.
- (5) Enforcement. Prior to issuing a citation for a violation of Subsection (2) a police officer shall ask the juvenile's age and reason for being in the public place. A police officer shall not issue a citation under Subsection (2) unless the officer reasonably believes that an offense has occurred and that none of the exceptions found in Subsection (3) apply.
- (6) Penalties.
 - (a) Any person who violates subsection (2) of this ordinance is subject to a forfeiture of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00).
 - (b) Any person who violates subsection (4) of this ordinance shall be subject to a forfeiture of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00).

(Sec. 23.11 Am. by Ord. 10,352, 1-10-92; Ord. 13,269, 3-11-03; R & Recr. by Ord. 13,677, 8-6-04)

23.12 TRANSIENT HOTELS & MOTELS REGULATED.

- (1) Transient Hotels.
 - (a) Hourly Rentals Prohibited. No Hotel, Motel or Tourist Rooming House may rent a room designed for dwelling, lodging or sleeping purposes for hourly or other short-time rates or in any way advertise that any such room is available at hourly or other short-time rates. A room designed for dwelling, lodging or sleeping purposes shall not be rented more than once between 6:00 a.m. and 5:59 p.m. on any given day and no more than once between 6:00 p.m. and 5:59 a.m. of the following morning. For purposes of this section, renting hourly or other short-time rates shall be defined as the granting of the use or possession of a room for lodging or sleeping purposes for an amount less than the minimum daily rental rate.
 - (b) Exception to Hourly Rental Prohibition. A hotel, motel or tourist rooming house may rent rooms designed for dwelling, lodging or sleeping purposes more than once between 6:00 a.m. and 5:59 p.m. on any given day and more than once between 6:00 p.m. and 5:59 a.m. of the following morning when such rental is for a specified legitimate and legal business purpose in which the persons occupying the room intend to be present within the City for a short period of time including but not limited to: traveling sports teams, performing artists, airlines, trucking/shipping companies and business meetings. Any hotel, motel or tourist rooming house renting rooms more than once during the specified hours in this subsection must maintain a registration record which indicates the nature of the room use, the name of the party or parties renting the room, and the time of check-in and check-out. Any room rented under this exception more than once during the specified hours must be thoroughly cleaned before being re-rented.
- (2) Registration Required.
 - (a) Every person who owns or operates a hotel, motel or tourist rooming house in the city shall keep and maintain a registration record for all guests renting a room or rooms at the hotel, motel or tourist rooming house. The registration record must indicate the room number rented, how many people will be in the room, the number of nights the guest is staying or has stayed, the guest's name, and the guest's signature and the type of identification offered to validate the reservation. The registration record shall indicate the date and time a guest checks in and the date and time the room is surrendered. No guest shall be allowed to register without first presenting valid identification that is verified by the hotel, motel or tourist rooming house to match the person registering.

Valid identification may include: driver's license, non-driver's state issued identification card, government identification, military identification, passport or any form of identification that contains the guest's name. The type of identification presented by the guest shall be noted in the register and shall include the document's identification number and the state or country of issuance.

- (b) Every hotel, motel or tourist rooming house that does not offer its guests valet parking must record on the registration record the make, model, license plate number and State of issue for any motor vehicle brought to the hotel, motel or tourist rooming house by the guest registrant.
 - (c) No person shall write or cause to be written, or knowingly permit to be written on any registration record in any hotel, motel or tourist rooming house, any other or different name or designation than the true name of the guest registering therein, or the name by which such guest is generally known, unless registering under the guest's true name would compromise the guest's safety and/or peace and tranquility, i.e. a guest who has been placed at the hotel, motel or tourist rooming house through a victim/witness program, as a sequestered juror, or the guest is a well-known performing artist or athlete who regularly registers under an assumed name or a corporate name. The burden will be on the hotel, motel or tourist rooming house to show that the guest's safety and/or peace and tranquility would have been compromised had the guest registered under their true name.
 - (d) Erasures or alterations to the registration record required by this subsection shall not be permitted or made for any purpose, and it shall be unlawful to erase a name or names or address or addresses or to permit such an erasure.
 - (e) Every peace officer shall have access to and the right to inspect at any time any registration record kept by any hotel, motel or tourist rooming house.
- (3) Any Hotel, Motel or Tourist Rooming House that violates Subsec. (1) of this ordinance more than three (3) times in any one month, or more than six (6) times in any year shall constitute a public nuisance.
 - (4) No Hotel, Motel or Tourist Rooming House may operate as a bawdyhouse, disorderly house, drug house, gambling place or criminal gang house, as those terms are defined in Chapter 823, Wis. Stats.
 - (5) The Office of the City Attorney is hereby authorized to commence and maintain an action to recover damages or to abate a public nuisance under Wis. Stat. ch. 823, against any Hotel, Motel or Tourist Rooming House that violates Subsection (2) or Subsection (3) of this Ordinance or that otherwise constitutes a public nuisance pursuant to Wis. Stat. ch. 823.
 - (6) Hotel, Motel or Tourist Rooming House Operator May Refuse Accommodations.
 - (a) Any person who owns or operates a hotel, motel or tourist rooming house may refuse or deny the use of a room, accommodations, facilities or other privileges of the hotel to any of the following:
 - 1. An individual who is unwilling or unable to pay for the room, accommodations, facilities, or other privileges of the hotel, motel or tourist rooming house.
 - 2. An individual who is visibly intoxicated, under the influence of alcohol or other drug, and is disorderly so as to create a public nuisance;
 - 3. An individual who the hotel owner or operator reasonable believes is seeking to use a room, accommodations, facilities or other privileges of the hotel for an unlawful purpose;
 - 4. An individual who the hotel owner or operator reasonable believes is bringing in anything which may create an unreasonable danger or risk to other persons, including but not limited to explosives or the unlawful use of firearms;
 - 5. An individual whose use of the room, accommodations, facilities or other privileges of the hotel would result in a violation of the maximum capacity of such hotel.
 - 6. An individual who does not provide the registration information as required in Subdivision (2)(a).

- (7) Exception to 23.12(6). Any tourist or other person occupying a dwelling unit in a hotel, motel or tourist rooming house for more than sixty (60) days while traveling away from their permanent place of residence, or any transient person without a permanent place of residence may not be excluded, forcibly evicted or constructively evicted from a dwelling unit other than by an eviction procedure specified under ch. 799, Wis. Stats.
- (8) Penalty. Any person who violates any of the provisions of this section may be subject to a forfeiture of not less than \$100 and nor more than \$1000. Each day of violation shall constitute a separate offense.

(Sec. 23.12 Cr. by ORD-08-00028, 3-15-08)

23.13 AUTOMOBILES NOT TO BE RENTED TO MINORS.

- (1) It shall be unlawful for any person, firm, or corporation in the City of Madison to rent, hire, or lease an automobile to any person or persons under the age of eighteen (18) years unless such person or persons shall file with the lessor the written consent of the parents or legal guardians of such lessee or lessees or the dean of men and women of the University of Wisconsin to such renting, for the day on which such automobile is so rented, hired or leased.
- (2) Such written consent shall be kept on record in the office of such lessor for a period of six (6) months after the date of such renting, hiring or leasing and shall be open to inspection at all reasonable times by any person.
- (3) It shall be unlawful for any person under the age of eighteen (18) years to misrepresent his or her age for the purpose of renting, hiring, or leasing an automobile or for any person not the parent or legal guardian, or a dean of men or women at the University of Wisconsin to write or sign the written consent provided for in Subsection (1) of this section.

23.14 AUTOMOBILES NOT TO BE RENTED TO ANY PERSON WITHOUT A DRIVER'S LICENSE.

No person, firm, or corporation shall rent hire, or lease an automobile to any person or persons unless such person or persons shall have a driver's license as required by the Statutes of the State of Wisconsin, and such lessor shall ascertain and place on any written consent required by Subsection (1) of Section 23.13 hereof a notation showing the driver's license number of the person for whom such consent is furnished.

23.15 TICKET SCALPING PROHIBITED.

- (1) No person shall buy or sell or offer to sell any ticket to any event for which tickets are required for entrance for more than the price printed on such ticket. (Am. by Ord. 7916, 1-13-83)
- (2) Any person violating the provisions of Subsection (1) shall be subject to a forfeiture of not more than one hundred dollars (\$100).

(Sec. 23.15 Cr. by Ord. 6199, 3-24-78)

23.16 REGULATING AND CONTROLLING UNIFORMS OF PRIVATE POLICE, SECURITY GUARDS, COURIERS AND OTHER SIMILARLY UNIFORMED PERSONS.

- (1) Purpose. The purpose of this ordinance is to regulate and control the uniforms and paraphernalia worn by private police and other quasi-police personnel under private employment so as to reduce or eliminate the possibility that the public would reasonably construe these private employees to be commissioned City of Madison police officers and to therefore rely on that notion. Such purpose is deemed to be for the benefit of the health, safety, and welfare of the citizens of the City of Madison.
- (2) No person, firm, or corporation which routinely conducts its business within the City of Madison shall wear or cause its employees or agents to wear a uniform, insignia, badge, pants, shirt, jacket and any other combination of clothing articles and paraphernalia which by their color, style, design and other characteristics would lead a reasonably prudent person to conclude that such person so garbed is a commissioned City of Madison police officer. It is the intent of this proviso to prohibit garb and paraphernalia which in its totality would create the impression in a reasonably prudent person that the one so clothed is a commissioned City of Madison police officer.
- (3) Exceptions. This ordinance is not applicable to any official governmental body or subdivision thereof or to such body's employees or agents so long as such employees or agents are so attired in the regular course of such employment. Further, this ordinance is not applicable to theatrical productions.
- (4) Severability. If any part or parts of this ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Common Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases might be declared invalid.
- (5) Penalty. Any person, firm, or corporation which violates any provision of this ordinance shall be subject to a forfeiture of not less than twenty dollars (\$20) nor more than two hundred dollars (\$200) for each violation.
- (6) Effective Date. This ordinance shall be in full force and effect six months after adoption and publication.

(Sec. 23.16 Cr. by Ord. 7548, 10-29-81)

23.17 BILLIARD HALL CLOSING HOURS. All persons who run a billiard hall, whether licensed or not, shall close such places of business or use and keep them closed from 1:00 a.m. to 5:00 a.m. of each day.

23.18 CRUELTY TO ANIMALS. It shall be unlawful for any person to neglect, unnecessarily injure or otherwise treat any animal in a cruel manner.

- (1) Definitions. As used in this ordinance:
 - (a) "Cruel" means causing unnecessary and excessive pain, suffering, injury, disfigurement or death.
 - (b) "Neglect" means failing to provide adequate food, water, shelter or veterinary care.
 - (c) "Unnecessarily injure" means causing unnecessary pain, suffering or death by means other than neglect.
- (2) Any violation of this ordinance or of Chapter 951 of the Wisconsin Statutes may result in prosecution and an abatement action, including an abatement order by a humane officer, an animal control officer or a law enforcement officer.

- (3) **Hearing.** Any person named in an abatement order, initiated under Subsection (2), may appeal such order to the Board of Health for Madison and Dane County Subcommittee by filing a notice of appeal with the Director of Public Health within ten (10) days of the date of service of the abatement order. The notice of appeal must state the grounds for the appeal. The Health Commission Subcommittee shall schedule a hearing to be held within ten (10) days of receipt of the appeal, unless the requester agrees to a later date. The Subcommittee shall make reasonable efforts to notify the appellant, the officer initiating the order and any other interested party of the hearing and the opportunity to present evidence and testimony. The hearing shall be informal in nature. After this hearing, the Subcommittee will determine whether to affirm, conditionally affirm or reject the abatement order. Within ten (10) days after the hearing, the Subcommittee shall issue its decision in writing and serve a copy of the decision by first class mail upon the appellant and any other party requesting a copy. (Am. by ORD-05-00033, 2-24-05)
- (4) **Appeal.** Any person adversely affected by a decision under Subsection (3), may seek judicial review by commencing an action in Circuit Court within thirty (30) days after the day that the decision was issued
(Am. by Ord. 12,565, 5-6-00).

23.185 HARASSMENT OF POLICE ANIMALS PROHIBITED.

- (1) It is unlawful for any person to frighten, intimidate, threaten, abuse, harass, strike, shove, kick or otherwise subject to physical contact unauthorized by its handler an animal used by a law enforcement agency to perform any duties or functions.
- (2) As used in this section, law enforcement agency means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes and ordinance violations while acting within the scope of their authority.
- (3) Violators shall be subject to a forfeiture of not less than \$50 nor more than \$300.
(Sec. 23.185 Cr. by Ord. 10,513, 9-24-92)

23.19 DESTRUCTION OF BIRDS PROHIBITED. No person shall injure or attempt to injure or destroy, within the limits of the City of Madison, any wild bird.

23.20 REGULATIONS CONCERNING MARIJUANA AND CANNABIS.

- (1) **Purpose.** The people of Madison specifically determine that the regulations herein contained concerning marijuana and cannabis are necessary to serve the ethical purpose of providing just and equitable legal treatment of the citizens of this community and to preserve the respect of such citizens for law, its process, and its administration.
- (2) **Definitions.** In this section:
Cannabis. The resin extracted from any part of the plant Cannabis Sativa L., or any other nonfibrous extract from any part of the plant containing delta-9-tetrahydrocannabinol.
Casually possess. The possession of not more than twenty-eight (28) grams of cannabis, or one hundred and twelve (112) grams of marijuana.
Marijuana. All parts of the plant Cannabis Sativa L., whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. It does not include cannabis or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

Practitioner.

1. A physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.
2. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.

Public place. A place which is in public ownership or a place to which the public has access; distinguished from a private place.

- (3) A person may casually possess marijuana or cannabis in a private place. Such casual possession is not a crime and is not subject to forfeiture.
- (4) No person shall casually possess marijuana or cannabis in a public place unless such marijuana or cannabis was obtained directly from or pursuant to a valid prescription or order of a practitioner while acting in the course of her, his, or its professional practice.
- (5) A violation of Subsection (4) of this ordinance shall be subject to a forfeiture of up to one hundred dollars (\$100). (Am. by Ord. 9244, 8-14-87)
- (6) A violation of this ordinance is not a crime and shall not subject a person found in violation thereof to loss of civil rights or to other disabilities imposed upon a person convicted of a crime. No entry or other record may be made which indicates that a person alleged or found to have violated this ordinance has been arrested for, charged with, prosecuted for, or convicted of a crime.
- (7) Separability Clause. If any subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

(Section 23.20 Cr. by Ord. 5833, 4-18-77)

23.201 POSSESSION OF DRUG PARAPHERNALIA.

- (1) No person may use, or possess with the primary intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of Chapter 961, Wis. Stats. Any person who violates this section is subject to a forfeiture of not more than \$500.
- (2) Wis. Stat. §§ 961.571 and 961.572, are hereby adopted by reference including amendments thereto as may be adopted from time to time.

(Sec. 23.201 Am. by Ord. 11,959, 10-31-97)

23.21 PRUNING OR REMOVING TREES IN PUBLIC HIGHWAYS OR PUBLIC PLACES.

- (1) No person, corporation, or association shall plant, cut, prune, or remove any living tree or shrub in a public highway in the City of Madison, or cut, disturb or interfere in any way with the roots of any tree, to the extent of causing serious injury to such tree, in such public highway, or spray any such trees or shrubs with any chemical or insecticides without written permit of the Board of Park Commissioners.
- (2) Nothing herein shall be construed as preventing the City Engineer or Superintendent of Streets, Sewers, and Sanitation (Superintendent of Sanitation) from trimming trees so as to prevent interference with street illumination, provided that before trimming the trees said City Engineer or Superintendent of Streets, Sewers, and Sanitation (Superintendent of Sanitation) shall obtain the suggestion of the City Forester, and if the trimming suggested by him shall be sufficient to accomplish the purpose the tree shall be trimmed accordingly.

23.22 PLANTING OF THESE TREES IN PUBLIC HIGHWAY. No shade or ornamental tree or shrub shall be planted in any of the public streets of the City of Madison until such tree and the place where it is to be planted shall first have been approved by the Board of Park Commissioners, and a permit granted by said Board therefore.

23.23 DEPOSITING MATERIALS NEAR TREES. No person shall place or maintain upon the ground, in a public highway of the City of Madison, stone, cement, lumber, or other substance or material which may impede the free passage of water and air to any tree or shrub in such highway without leaving an open space of ground outside the trunk of said tree or the base of said shrub, of an area not less than sixteen (16) square feet. Before depositing any material in any highway of the City of Madison near to trees therein, the person so depositing said materials shall place such guards around the trees as shall effectively prevent injury to them.

23.24 BREAKING OR INJURING TREES, SHRUBS.

- (1) No person shall break or injure any tree planted in any highway in the City of Madison, nor shall he pour salt water on any such public highway in such places as to injure any tree or shrub planted or growing therein.
- (2) No person shall occupy any flower bed or area of plantings nor shall any person injure, destroy or damage in any way any tree, shrub, flower or planting in any public park or public place within the city of Madison. For purposes of this subsection, public place means a place which is in public ownership or a place to which the public has access, distinguished from a private place. (Am. by Ord. 11,938, 9-26-97)
- (3) No person, during the course of performing or causing to be performed public or private work on or immediately adjacent to property that the City of Madison has an ownership interest in, including, without limitation, highways and highway right-of-ways, public walkways and bike paths, parks, and greenways, shall intentionally or negligently cause damage to any tree planted on said City of Madison property such that the tree must be removed. In performing or causing to be performed such work, persons are expected to exercise ordinary care to prevent unnecessary damage to the tree and root structure so that the tree remains viable after the work is performed. It shall not be a violation of this provision if the City Engineer or City Forester, or their designees, authorize the damage to the tree prior to the damage, or within a reasonable time thereafter. Each tree damaged shall be a separate violation, and any person violating this provision shall be subject to the following forfeitures: if the tree damaged has a diameter of three (3) inches or less (measured at twelve inches above ground level and rounded to the nearest inch), a forfeiture of two hundred and fifty dollars (\$250) plus thirty dollars (\$30) per diameter inch; if

the tree damaged has a diameter of more than three (3) inches (measured at twelve inches above ground level and rounded to the nearest inch), a forfeiture of one hundred and fifty-five dollars (\$155) per diameter inch. However, no person shall be subject to a forfeiture under this subsection if that person has already reimbursed the City for the damage to the tree through the provisions of a public works contract. (Cr. by ORD-10-00071, 7-27-10)

23.25 ATTACHING ELECTRIC WIRES, ETC., TO TREES. No person, corporation, or association, shall attach any electric insulator, or any device for holding of electric wire, to any tree growing or planted upon any public highway of the City of Madison. Every person, corporation, or association having any wire or wires charged with electricity running through a public highway shall securely fasten such wire or wires to a post or other structure so that they shall not come in contact with any tree therein and every such person, corporation, or association shall, when and if the Board of Park Commissioners shall determine it to be necessary in order to prune or cut down any tree growing on a public highway of the City of Madison, temporarily remove any such wire or wires or cut off the electricity within twenty-four (24) hours after service upon the owner of said wire or wires or his or its agents, of a written notice signed by the president of the Board of Park Commissioners to remove said wire or wires or cut off said electricity.

23.26 TALL BARBERRY AND PURPLE BARBERRY PROHIBITED. No person shall hereafter sell or plant, within the City of Madison, the “berberis bulgaris”, commonly known as the tall barberry or the “berberis purpurea”, commonly known as the purple barberry.

23.27 COTTON BEARING POPLAR TREES RESTRICTED. No person shall sell or plant any female cotton bearing tree of the poplar family commonly called the Eastern Cottonwood, *Populus deltoides*, and the White Poplar, *Populus alba*, within the boundaries of the City of Madison. (R. & Recr. by Ord. 4667, 8-5-74)

23.28 SEED BEARING BOX ELDER TREES RESTRICTED. No person shall sell or plant any seed bearing box elder tree, *Acer negundo*, within the boundaries of the City of Madison. (R. & Recr. by Ord. 4666, 8-5-74)

23.29 NOXIOUS WEEDS.

- (1) The term “noxious weeds” as used in this section includes the following: Canada or other thistles, leafy spurge and field bindweed (commonly called creeping Jenny), *Ambrosia trifida* (commonly called giant ragweed), *Ambrosia artemesifolia* (commonly called common ragweed), burdock, *Rhus radicans* sometimes called *Radicans toxicodendron*, *Rhus toxicodendron* and *Toxicodendron radicans* (commonly called poison ivy), *Urtica dioica* (commonly called stinging nettle), and non-native *Lythrum salicaria* and *Lythrum virgatum* and their hybrids (commonly called purple loosestrife). (Am. by Ord. 11,298, 7-11-95)
- (2) Every person shall destroy all of such noxious weeds on lands which he shall own, occupy or control and failure to comply with this paragraph shall subject such person to a forfeiture in accordance with the provisions of Section 23.60.
- (3) The term “destroy” means the complete killing of weeds or the killing of weed plants above the surface of the ground by the use of chemicals, cutting, tillage, cropping system, pasturing livestock, or any or all of these in effective combination, at such time and in such manner as will effectually prevent such plants from maturing to the bloom or flower stage.
- (4) Weed Commissioners; Appointment, Oath, Term; Exception. The Mayor shall appoint two (2) or more Weed Commissioners on or before May 15 in each year; such Weed Commissioners shall take the official oath (which oath shall be filed in the office of the City Clerk) and shall hold their office for one (1) year and until their successors have qualified.

(5) Duties; Powers; Collections of Tax.

The Weed Commissioner or Superintendent of Streets shall carefully investigate concerning the existence of noxious weeds in his district; and if any person therein neglects to destroy any weeds as required by this section, he shall, without giving written notice, destroy or cause all such weeds to be destroyed, in the manner deemed to be the most economical method and present to the Treasurer his account therefore verified by his oath and approved by the appointing officer. Such account shall specify by separate items the amount chargeable to each piece of land described the same, and shall, after being paid by the Treasurer, be filed with the City, who shall enter the amount chargeable to each tract of land in the next tax roll in a column headed "For the Destruction of Weeds", as a tax on the lands upon which such weeds were destroyed, which tax shall be collected as other taxes are, or as taxes are collected on personal property pursuant to Wis. Stat. §74.11, except in case of lands which are exempt from taxation in the usual way. In case of railroad or other lands not taxed in the usual way the amount chargeable against the same shall be certified by the City to the State Treasurer with the request that he add the amount designated therein to the sum due from the company owning, occupying or controlling the lands specified and that he collect the same therefrom as prescribed in Wis. Stat. ch. 76, and return the amount collected to the City. Any Weed Commissioner may, without giving written notice, enter upon any lands upon which any of the weeds mentioned in this section are growing, and cut or otherwise destroy them, without being liable to an action for trespass or any other action for damages resulting from such entry and destruction, if reasonable care is exercised in the performance of the duty hereby imposed.

23.30 MAINTENANCE OF BARBED WIRE FENCES. It shall be unlawful for any owner or occupant of land in the city of Madison to build or maintain any fence constructed wholly or in part of barbed wire along any public street adjacent to any sidewalk.

23.31 ANIMALS NOT TO BE PERMITTED TO RUN AT LARGE.

- (1) Notwithstanding Sec. 23.32, it shall be unlawful for the owner or keeper of any nonhuman, warm-blooded, vertebrate or reptile to permit the same to run at large at any time within the limits of the City of Madison. (Am. by Ord. 5394, 3-1-76)
- (2) No person, firm or corporation shall keep, harbor, or have in their possession, custody, or control any pig, hog, boar, or swine within the limits of the City of Madison provided, however, that the prohibition contained in this section shall not apply to operators of slaughterhouses or packing plants, and areas zoned "Agricultural."

23.315 ANIMALS PROHIBITED DURING STREET USE PERMIT EVENT.

- (1) When a street use permit has been issued under Sec. 10.056, MGO, and there are ten (10) or more food vendors participating in the event as defined in Sec. 10.056(5)(h), it shall be unlawful for the owner or keeper of any animal to allow an animal to be in any area within the perimeter of the event as described on the street use permit.
- (2) Exceptions. This section does not apply to the following animals:
 - (a) Service animals as defined by Wis. Stats. § 106.52(1)(fm).
 - (b) Animals that are participating in a parade that is authorized by Sec. 12.87, MGO.
 - (c) Animals that are owned by exhibitors authorized by the event sponsor, provided that the animal is leashed according to the requirements found in Sec. 23.32(1), MGO, or confined at all times while in the perimeter of the event and are kept a distance of at least fifty (50) feet from all food vendors.
 - (d) Animals in service to law enforcement.

(Cr. by ORD-10-00079, 8-12-10)

23.32 REGULATION OF DOGS AND CATS RUNNING AT LARGE.

- (1) It shall be unlawful for the owner or keeper of any dog or cat to permit the same to run at large in the City of Madison. Any animal found at large shall be conclusively presumed to be so with the permission of its owner or keeper. A dog or cat shall be deemed to be at large when it is off the premises of its owner or keeper, unless under the control of a person and restrained by means of a chain, rope or cord of sufficient strength and of a length not to exceed six (6) feet to control the action of such dog or cat, except as provided in Subsection (2). This ordinance is not intended to prohibit the keeping of dogs or cats within enclosed areas which will reasonably control the conduct of said dog or cat.
- (2) Dogs are permitted to run unleashed in the posted areas of Brittingham Park at Broom Street, Quann Park, Sycamore Park, Lucia Crest Park between 5:00 a.m. and 7:30 a.m. only, Demetral Field, the McCormick Avenue Greenway (located west of McCormick Ave., north of Commercial Ave., east of Starkweather Creek, and south of Aberg Ave.), and south of the lagoon in Warner Park under all of the following conditions: (Am. by Ord. 11,689, 10-14-96; Ord. 12,462, 9-3-99; ORD-10-00054, 5-27-10)
 - (a) The owner or keeper of the dog must be present; and
 - (b) The dog must be under the voice control of the owner or keeper at all times; and
 - (c) The dog must wear a rabies vaccination tag as required by Section 23.39(3), Madison General Ordinances, owner identification as required by Section 23.33(7)(a), a license tag as required by Section 23.33(7)(c), and a permit tag as required by subsection (2)(e) below; and
 - (d) Feces must be properly removed and disposed of in compliance with Section 7.322, Madison General Ordinances; and
 - (e) The owner of the dog must have secured a permit for use of dog exercise areas in city and county parks. The revenue from the permit fee shall be put in a segregated fund to be used in the establishment and maintenance of dog exercise areas. The permit fee shall be established by the Park Commission subject to approval by the Common Council.
- (3) Any person violating any provision of this section for the first time in any twelve-month period may be subject to a forfeiture of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100); any person violating any provision of this section for the second time in a twelve-month period may be subject to a forfeiture of not less than fifty dollars (\$50) nor more than two hundred dollars (\$200); any person violating any provision of this section for the third time in a twelve-month period may be subject to a forfeiture of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300); any person violating any provision of this section for the fourth and subsequent time in a twelve-month period may be subject to a forfeiture of not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500).
- (4) These amendments to Section 23.32, Madison General Ordinances, shall be effective May 15, 1996.

(Sec. 23.32 Am. by Ord. 11,549, 3-14-96)

23.33 ANIMAL CONTROL OFFICER TO BE APPOINTED TO SEIZE AND IMPOUND ANIMALS.

- (1) The Director of Public Health shall appoint humane officers whose duties it shall be to seize any and all animals found running at large in the City of Madison.
- (2) It shall be the duty of a humane officer to ascertain, if possible, the owners of all animals seized by the officers and to notify such owners of the fact that their animals have been seized and where they may be found, and that the owners may retrieve their animals upon payment of an animal impoundment fee of thirty-five dollars (\$35) to the City of Madison and any and all fees for the board of the animals during the time they are impounded. (Am. by Ord. 10,935, 7-5-94; Ord. 12,707, 11-9-00)

- (3) A humane officer shall order the impoundment of any animal reasonably believed to be infected with rabies, or to have been in contact with a rabid animal or to have bitten or otherwise injured a person in such a way as to break the skin and allow the possible contact of an open wound with the animal's saliva. If the animal is running at large, the animal shall be immediately seized and restrained by a humane officer.
 - (a) An officer who orders the animal impounded shall deliver the animal or shall order the animal delivered to a veterinary clinic in the County of Dane as soon as possible but no later than twenty-four (24) hours after the original order is issued. 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.
 - (b) If an animal is ordered to be impounded, the custodian of the veterinary clinic or the owner, in cases of home impoundment, 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. In this paragraph, "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. The ten-day period may be extended pursuant to Sec. 95.21(5)(c) of the Wisconsin Statutes or by order of a veterinarian. Reports at the end of such observation shall be made without delay to the Health Department by telephone.
 - (c) In cases of home impoundment, "strict isolation" shall be defined by the Director of Public Health with additional special conditions as necessary in order to protect the public safety and welfare.
 - (d) Any person who refuses or fails to deliver the animal in question shall be subject to a forfeiture of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each day such violation continues shall be considered as a separate offense.
 - (4) A humane officer shall, upon seizing any animal, turn the animal over to a facility approved by the Department, who shall hold the animal until claimed by the owner or until directed to euthanize the animal by the humane officer.
 - (5) After any animal has been kept for seven (7) days and the animal's owner cannot be ascertained by the exercise of reasonable diligence, the animal is deemed to be unclaimed and may be disposed of in accordance with Sec. 173.23(1m) of the Wisconsin Statutes.
 - (6)
 - (a) The owners of all dogs over five (5) months of age are hereby required to place a collar on their dogs. The name and address of the owner of the dog must be plainly stamped on the collar. Any person who removes a dog collar containing name of owner or license number, from a dog, shall be subject to a forfeiture of not less than twenty-five dollars (\$25) nor more than fifty dollars (\$50).
 - (b) It is unlawful to keep any dog over five (5) months of age without having obtained a license for the dog pursuant to Sec. 9.50 of the Madison General Ordinances.
 - (c) The owner or keeper of a dog shall securely attach the tag issued pursuant to Sec. 9.50(4)(b) of the Madison General Ordinances to a collar and a collar with the tag attached shall be kept on the dog for which the license is issued at all times.
 - (7) Nothing contained in this section shall be construed as in any way changing or modifying the provisions of any other section of these ordinances relating to the keeping of dogs.
- (Sec. 23.33 Am. by Ord. 9643, Adopted 12-6-88; Am. by ORD-08-00008, 1-24-08)

23.34 MADISON ESTABLISHED AS NUCLEAR FREE ZONE.

- (1) Findings. The Common Council of the City of Madison hereby finds and declares that:
 - (a) Nuclear weapons production, in the United States and in other countries, is draining the world's resources and presenting humanity with an ever-increasing threat of nuclear war.
 - (b) Nuclear weapons development within the City of Madison is in direct conflict with the values of its citizens, and the maintenance of their security, health and safety.
 - (c) Madison voters have expressed their strong support for an end to the arms race, voting in 1979 for a transfer of money from the military budget to social programs and in 1982 for a nuclear weapons freeze.
 - (d) An emphatic expression of feeling by local citizens and their governments can help initiate steps by the United States and other countries with nuclear weapon power away from the brink of nuclear war.
 - (e) The storage or transportation of high-level radioactive nuclear wastes within or through the City of Madison could pose serious health, safety and environmental risks to the city's residents.
- (2) Policy. It shall be the policy of the City of Madison that:
 - (a) Madison shall be established as a Nuclear Free Zone.
 - (b) No nuclear weapons, delivery systems for such weapons, or components expressly intended to contribute to the operation, guidance or delivery of a nuclear weapon shall be produced within the city.
 - (c) No waste from the production of nuclear weapons, their components, or commercial nuclear power shall be stored within the city.
 - (d) The City shall request the United States Department of Transportation and the Wisconsin Division of Emergency Government to provide the Mayor with advance notification of any high-level radioactive waste shipment through the city limits. Upon such notification, the City shall act to prevent transportation of high-level radioactive waste through the city by seeking an exemption from preemption by Department of Transportation regulations or using other legal means at its disposal.
- (3) This ordinance expresses the policy of the City of Madison. It is not intended to make violations subject to a forfeiture and nothing in this ordinance shall be construed to prohibit or regulate any activity not specifically described in Subsection (2).
- (4) Severability. The provisions of this ordinance shall be severable and if any of the provisions shall be held in contravention of the Constitution and laws of the State of Wisconsin, or of the United States, the validity of the rest of the ordinance shall not be affected. It is hereby declared to be the intent of this ordinance that the same would have been adopted had such unconstitutional or unlawful provision, if any, not been included herein.

(Sec. 23.34 Cr. by Ord. 8169, 12-2-83)

23.35 PERMITTING ANIMAL TO CAUSE INJURY.

- (1) An animal who is off the property of its owner or custodian may not attack, bite or otherwise injure:
 - (a) Any other animal or
 - (b) Any person who is engaged in a lawful activity.
- (2) Any person who owns or is the custodian of an animal that violates Section (1) shall be deemed to have permitted said violation and shall upon conviction be subject to a forfeiture of not more than five hundred dollars (\$500).

(Cr. by Ord. 9642, Adopted 12-6-88; R. & Recr. by ORD-07-00027, 3-15-07)

23.36 GLASS-FREE ZONE.

There is hereby established a Glass-Free Zone within the City of Madison consisting of all land within the portion of the City described in Section 23.36(1)(c). No person shall possess any glass container on City-owned property within the Glass-Free Zone.

This section shall only be operative on the days and during the times established by resolution.

- (1) Definitions. For purposes of this chapter, the following words or terms have the meaning set forth below:
 - (a) “City-owned Property” means real property owned by the City of Madison, including but not limited to, rights-of-way, streets, sidewalks, alleys, parks, parking lots and buildings.
 - (b) “Glass Container” means a container of any configuration, with a capacity when empty of more than one-half (0.5) ounce, that is made of glass, crystal, ceramic, or any other material likely to shatter when dropped onto or struck by harder material.
 - (c) “Glass-Free Zone” means the portion of the City specifically described in the authorizing resolution.
- (2) Operative Date And Times.
 - (a) This section shall only be operative on the days and during the times established by resolution. The resolution shall specifically state the date(s), time(s), and geographic boundaries of the Glass-Free Zone.
 - (b) The City Clerk shall cause notice of adoption of the resolution to be made by publication in the same manner as notice is given of the adoption of an ordinance. The notice shall include a diagram setting forth the boundaries of the Glass-Free Zone.
- (3) Penalty. Enforcement of this chapter shall be done in the least intrusive manner practical under the circumstances. A law enforcement officer may confiscate any glass container possessed in violation of this ordinance. Any person violating this ordinance shall be subject to a forfeiture of not less than \$50.00 (fifty dollars) nor more than \$200.00 (two hundred dollars).

23.37 INTERFERING WITH BREASTFEEDING PROHIBITED

Notwithstanding any other provision of law, a mother or her surrogate may breastfeed her child and may express breastmilk in any location, public or private, except the private home or residence of another, where the mother or her surrogate and the child are otherwise authorized to be present. Any person who intentionally interferes with a mother's or her surrogate's attempts to breastfeed her child or to express breastmilk, except the owner or resident of a private home or residence, shall be subject to a forfeiture of not less than \$25.00 nor more than \$250.00 for each such violation.

(Cr. by ORD-07-00012, 2-2-07)

23.375 PROHIBITION AGAINST PROFESSIONAL STRIKEBREAKERS. Prohibition Against the Employment, Recruitment and Furnishing of Professional Strikebreakers to Replace Employees Involved in a Labor Dispute and to Prescribe the Penalties Therefore.

- (1) No person, partnership, agency, firm or corporation, or officer, employee or agent thereof, shall recruit, procure, supply or refer any person for employment who customarily and repeatedly offers himself for employment in place of any employee involved in a labor dispute in which such person, partnership, agency, firm or corporation is not directly involved.
- (2) No person, partnership, firm or corporation involved in a labor dispute shall directly or indirectly:
 - (a) Employ in the place of an employee involved in such dispute, any person who customarily and repeatedly offers himself for employment in the place of employees involved in a labor dispute, or
 - (b) Contract or arrange with any other person, partnership, agency, firm or corporation to recruit, procure, supply, or refer persons for employment who customarily and repeatedly offer themselves for employment in place of employees involved in such labor dispute.
- (3) No such person who customarily and repeatedly offers himself for employment in place of employees involved in a labor dispute shall take or offer to take the place in employment of any employee involved in a labor dispute.

- (4) Nothing in this ordinance, other than the employment of persons who customarily and repeatedly offer themselves for employment in place of any employees involved in a labor dispute, shall be construed so as to prevent or prohibit a person, partnership, firm or corporation involved in a labor dispute from conducting its business operations and from safeguarding property and persons during the course of such labor dispute.
- (5) Any person, partnership, agency, firm or corporation, or any officer, employee or agent thereof, who or which shall violate any provision of this ordinance shall be subject to a forfeiture of not less than fifty dollars (\$50.00) and not more than five hundred dollars (\$500.00).

23.38 PURCHASE OR POSSESSION OF TOBACCO PRODUCTS BY CHILDREN PROHIBITED.

- (1) No person under the age of eighteen (18) years shall buy, attempt to buy, or possess any cigarette or tobacco product or falsely represent her or his age for the purpose of receiving any cigarette or tobacco product, except as provided in Subsection (2).
- (2) A child may purchase or possess cigarettes or tobacco products for the sole purpose of resale in the course of employment during her or his working hours if employed by a retailer licensed under Sec. 134.65(1), Wis. Stats.
- (3) A law enforcement officer shall seize any cigarette or tobacco product involved in any violation of subsection (1) committed in her or his presence.
- (4) Any person violating subsection (1) above shall be subject to one or more of the dispositions set out in Section 1.10 of these ordinances.

(Sec. 23.38 Am. by Ord. 10,586, 1-29-93; 8-13-93)

23.385 RESTRICTIONS ON SALE OR GIFT OF CIGARETTES OR TOBACCO PRODUCTS.

- (1) Definitions. For the purpose of this section, the definitions found in Sec. 134.66(1), Wis. Stats., shall apply.
- (2) Restrictions.
 - (a) No retailer, manufacturer distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may sell or provide for nominal or no consideration may sell or give cigarettes or tobacco products to any person under the age of eighteen (18) years, except as provided in Sec. 23.38(2) of these ordinances. A vending machine operator is not liable under this subsection for the purchase of cigarettes or tobacco products from her or his vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.
 - (am) No retailer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, manufacturer, distributor, jobber or subjobber, and no agent or employee of an independent contractor may provide for nominal or no consideration cigarettes or tobacco products to any person except in a place where no person younger than 18 years of age is present or permitted to enter unless the person who is younger than 18 years of age is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years. (Cr. by Ord. 12,288, 12-14-98)
 - (b)
 - 1. A retailer shall post a sign in areas within her or his premises where cigarettes or tobacco products are sold to consumers stating that the sale of any cigarette or tobacco product to a person under the age of 18 is unlawful under this section and Section 23.38, Madison General Ordinances.
 - 2. A vending machine operator shall attach a notice in a conspicuous place on the front of her or his vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of 18 is unlawful under Sec. 23.38 of these ordinances and that the purchaser is subject to a forfeiture of not to exceed fifty dollars (\$50). (Am. by Ord. 13,146, 9-24-02)

- (cm) 1m. A retailer or vending machine operator may not sell cigarettes or tobacco products from a vending machine unless vending machine is located in a place where the retailer or vending machine operator ensures that no person younger than 18 years of age is present or permitted to enter unless he or she is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.
 - 2. Notwithstanding Subdivision 1m. above, no retailer may place a vending machine within five hundred (500) feet of a school.
- (d) No retailer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under Sec. 139.32(1), Wis. Stats. (Sec. 23.385(2)(d) R. and Sec. 23.385(2)(e) Renum. to 23.385(2)(d) by Ord. 13,146, 9-24-02)
- (2m) Training.
 - (a) Except as provided in Subdiv. (b), at the time that a retailer hires or contracts with an agent, employee, or independent contractor whose duties will include the sale of cigarettes or tobacco products, the retailer shall provide the agent, employee, or independent contractor with training on compliance with Subsec. (2)(a) and (am), including training on the penalties under Subsec. (4)(a)2. for a violation of Subsec. (2)(a) or (am). The department of health and family services shall make available to any retailer on request a training program developed or approved by that department that provides the training required under this subsection. A retailer may comply with this subsection by providing the training program developed or approved by the department of health and family services or by providing a comparable training program approved by that department. At the completion of the training, the retailer and the agent, employee, or independent contractor shall sign a form provided by the department of health and family services verifying that the agent, employee, or independent contractor has received the training, which the retailer shall retain in the personnel file of the agent, employee or independent contractor. (Cr. by Ord. 13,146, 9-24-02)
 - (b) Subdiv. (a) does not apply to an agent, employee, or independent contractor who has receive the training described in Subdiv. (a) as part of a responsible beverage server training course or a comparable training course, as described in Sec. 125.04(5)(a)5., Wis. Stats., that was successfully completed by the agent, employee, or independent contractor.
 - (c) If an agent, employee, or independent contractor who has not received the training described in Subdiv. (a) commits a violation of Subsec. (2)(a) or (am), the City may issue a citation based on that violation only to the retailer that hired or contracted with the agent, employee or independent contractor and not to the agent, employee or independent contractor who has not received that training. If an agent, employee or independent contractor who has received the training described in Subdiv. (a) commits a violation of Subsec. (2)(a) or (am) for which the City issues a citation to the retailer that hired or contracted with the agent, employee or independent contractor, the City shall also issue a citation based on that violation to the agent, employee or independent contractor who has received that training.
- (3) Defense of Sale to Minor. Proof of all of the following facts by a retailer, manufacturer distributor, jobber, or subjobber, an agent, employee, or independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber, or an agent or employee of an independent contractor who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution for a violation of Subsection (2)(a) above: (Am. by Ord. 13,146, 9-24-02)
 - (a) That the purchaser falsely represented that she or he had attained the age of 18 and presented an identification card.
 - (b) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the age of 18.
 - (c) That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and in the belief that the purchaser had attained the age of 18.

(4) Penalties.

- (a) 1. In this paragraph, "violation" means a violation of sub. (2)(a), (am), (cm), or (d).
(Am. by Ord. 13,146, 9-24-02)
2. A person who violates Subsection (2)(a), (am), (cm), or (d) is subject to a forfeiture of:
- a. Not more than five hundred dollars (\$500) if the person has not committed a previous violation within twelve (12) months of the violation; or
 - b. Not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) if the person has committed a previous violation within twelve (12) months of the violation.
- (Am. by Ord. 13,146, 9-24-02)
3. A court shall suspend any license or permit issued under Sec. 134.65, 139.34 or 139.79, Wis. Stats., to a person for:
- a. Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation;
 - b. Not less than 3 days nor more than 10 days, if the court finds that the person committed a violation within 12 months after committing 2 other violations; or
 - c. Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing 3 or more other violations.
4. The court shall promptly mail notice of a suspension under Paragraph 3. above to the department of revenue and to the clerk of each municipality which has issued a license or permit to the person.
- (b) Whoever violates Subsection (2)(b) above shall forfeit not more than twenty-five dollars (\$25).

(Sec. 23.385 Am. by Ord. 12,288, 12-14-98; Ord. 13,146, 9-24-02)

23.39 VACCINATION OF DOGS AND CATS REQUIRED. (Title Am. by Ord. 10,495, 8-28-92)

- (1) It shall be the duty of any person who owns, harbors or keeps a dog or cat to have such animal inoculated with an anti-rabies vaccine by a veterinarian in accordance with the most recent Compendium of Animal Rabies Vaccine within thirty (30) days after the animal reaches four (4) months of age and revaccinated within one (1) year after initial vaccination. If the owner obtains the dog or cat or brings it into this state after the animal has reached four (4) months of age, the owner shall have the animal vaccinated against rabies within thirty (30) days after the animal is obtained or brought into the state unless the animal has been vaccinated as evidenced by a current certificate of rabies vaccination from this state or another state. The owner of a dog or cat shall have the animal revaccinated against rabies by a veterinarian before the date that the immunization expires as stated on the certificate of vaccination or, if no date is specified, within one (1) year after the previous vaccination. (Am. by Ord. 10,495, 8-28-92)
- (2) The certificate provided by the veterinarian shall contain provisions for inserting information including name and address of the owner of the dog or cat, date of vaccination, number of dog or cat tag, breed, age, color and sex of dog or cat and such other information as may be required by the Director of Public Health. The veterinarian shall provide metal tag to be attached to the collar or harness of the dog or cat as evidence of such inoculation. Such tag shall be numbered and shall contain the year of issuance. The type and form of tags and certificates issued by the veterinarians shall be approved in advance by the Chief of Police and Director of Public Health, respectively.

- (3) It shall be the duty of each veterinarian after inoculating a dog or cat to insert in each certificate the information required thereby, to present one (1) copy to the owner of the dog or cat, to mail or deliver one (1) copy to the Director of Public Health within fifteen (15) days after inoculation and to retain the remaining copy or copies. The veterinarian shall also deliver the corresponding tag to the owner of the dog or cat and said owner shall immediately attach the same to the collar or harness of said dog or cat which shall be worn by the dog or cat at all times. Each veterinarian shall, upon request of the Director of Public Health, furnish a numbered list of all rabies vaccination certificates issued annually to date.
- (4) It shall be unlawful to own, harbor or keep any dog or cat which does not carry the tag as provided by Subsection (3) hereof.
- (5) In addition to the penalties hereinafter provided for violation of Subsection (4), any police officer of the City may impound any such dog or cat which does not carry the tag as provided by Subsection (3) hereof. The possession of any dog or cat so impounded or seized may be obtained by payment of a fee of one dollar (\$1) and any and all fees for the board of said animals during the time they are impounded provided, however, that said dogs or cats shall not be released until proof has been furnished to the police officer or health officer that the dog or cat has been inoculated with anti- rabies vaccine in accordance with the terms of this ordinance. After such dog or cat has been so impounded for a period of seven (7) days without it having been claimed by its owner or anyone in behalf of said owner, said dog or cat shall be destroyed under the direction of a police officer or health officer of the City. Notice of impounding shall be given by the person or officer in the possession of the dog or cat within twenty-four (24) hours of impounding to the owner of the dog or cat if known.
- (6) Any person, police officer or health officer who shall kill or impound any dog or cat shall make a report to the City Clerk stating when and under what conditions he seized and impounded such dog or cat and the owner's name if known.
- (7) Any person violating any of the provisions of Subsection (4) of this ordinance shall be subject to a forfeiture of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100). (Am. by Ord. 7179, 12-29-80)

23.40 ELM TREES INFECTED WITH DUTCH ELM DISEASE OR OAK TREES INFECTED WITH OAK WILT DISEASE OR ASH TREES INFESTED WITH EMERALD ASH BORER A NUISANCE. (Title Am. by ORD-09-00115, 8-11-09)

(1) Public Nuisances Declared.

(a) The Common Council of the City of Madison having determined that the health of the elm trees within the City of Madison is threatened by a fatal disease known as Dutch elm disease *Ceratocystis Ulmi* (Buisman) hereby declares the following to be a public nuisance:

1. Any living or standing elm tree or part thereof infected with the Dutch elm disease fungus or which harbors any of the elm bark beetles *Scolytus mulistriatus* (Marsh.) or *Hylargophinus rufipes* (Eichh.).
2. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying insecticide.

(b) The Common Council of the City of Madison having determined that the health of oak trees within the City of Madison is threatened by a fatal disease known as oak wilt disease (*Ceratocystis fagacearum*) hereby declares the following to be a public nuisance:

1. Any living or standing oak tree or part thereof infected with the oak wilt disease fungus.
2. Any dead oak tree or part thereof, including logs, branches, stumps, firewood or other oak material from which the bark has not been removed.

(c) The Common Council of the City of Madison having determined that the health of the ash trees within the City of Madison is threatened by Emerald Ash Borer (*Agrilus planipennis*), an exotic wood boring beetle that only feeds on ash trees, hereby declares the following to be a public nuisance:

1. Any living or standing ash tree or part thereof infected with or which harbors any of the beetles Emerald Ash Borer (*Agrilus planipennis*).
2. Any Emerald Ash Borer infested dead ash tree or part thereof, including logs, branches, stumps, firewood or other ash material from which the bark has not been removed and burned.

(2) Nuisances Prohibited. No person, firm, or corporation shall permit any public nuisances as defined in Subsection (1) of this ordinance to remain on any premises owned or controlled by him, her or it within the City of Madison.

(3) Inspection. Following receipt of a complaint, the City Forester, or designee, shall inspect or cause to be inspected all premises and places within the City to determine whether any public nuisance as defined in Subsection (1) of this ordinance exists thereon and shall also inspect or cause to be inspected any elm tree, oak tree or ash tree reported or suspected to be infected with the diseases or insects defined in Subsection (1) of this ordinance or any elm bark, oak bark or ash bark bearing material reported or suspected to be infested with the diseases or vectors listed in Subsection (1) of this ordinance.

(Am. by Ord. 13,640, 6-23-04)

(4) Abatement of Nuisances.

(a) If the City Forester, or designee, upon inspection or examination in person or by some qualified person acting for her/him, shall determine that any public nuisance as herein defined exists in or upon any public street, alley, park or other public place, including the terrace strip between curb and lot line within the City of Madison, s/he shall:

1. Immediately cause it to be removed and the wood to be debarked, covered or chipped, or

2. Otherwise abate the nuisance in such manner as to destroy or prevent as fully as possible the spread of Dutch elm disease or the insect pests or vectors known to carry such disease fungus, or the spread of oak wilt disease, or the spread of Emerald Ash Borer beetles.
(Am. by Ord. 13,640, 6-23-04)
- (b) If the City Forester, or designee, shall determine within reasonable certainty that any public nuisance as herein defined in Subsection 1 exists in or upon private premises, s/he shall report the existence of such nuisance to the Board of Park Commissioners; the Board shall, if it determines that such nuisance exists, cause notice to be issued to the owner of the lot or parcel of land on which such tree(s) stand or her/his agent, or if neither is known and there is a tenant or operator, occupying said property then to such tenant or operator, that the Board of Park Commissioners proposes ordering the removal and destruction of such tree(s) as nuisances under this ordinance. The notice shall specify the general location and number of such tree(s) on the lot or parcel of land, and inform that a hearing will be held before said Board of Park Commissioners for the purpose of ordering the removal and destruction of such tree(s). The notice to the owner, agent or tenant of the property shall be issued at least two (2) weeks prior to the hearing and shall indicate the date, time, and location where the hearing will be held before the Board of Park Commissioners. The notice shall be mailed via first class mail to the property owner's last known address, and a copy shall be served upon the owner or occupant at the property location or may be posted by attaching to the entrance of any dwelling, building or other structure on the premises. After such hearing the City Forester, or designee, subject to the direction of the Board, shall abandon the work or proceed with it as s/he believes the best interests of the public require. Once the Board of Park Commissioners has ordered the removal and destruction of such tree(s) as nuisances under this ordinance, in lieu of such removal by the City Forester, or designee, the City Forester, or designee, shall issue a written notice to the owner, agent or tenant or operator of the property to abate such nuisance within a reasonable period of time as specified in the notice. The notice shall include the method(s) by which the property owner, agent, tenant or operator shall abate the nuisance and the proper method(s) of disposal of such trees, and that failure to abate the nuisance as so ordered will result in the City abating the nuisance at the property owner's expense. The notice shall be mailed via first class mail to the property owner's last known address, and a copy shall be served upon the owner or occupant at the property location or may be posted by attaching to the entrance of any dwelling, building or other structure on the premises. (Am. by Ord. 9305, 10-29-87; Ord. 12,684, 9-25-00; Ord. 13,640, 6-23-04)
 - (c) If such owner, agent or tenant or operator does not abate said nuisance within the time limited, the City Forester, or designee, may cause the same to be abated. No damages shall be awarded to the owner for the destruction of any elm trees, elm wood, oak trees, oak wood, ash trees or ash wood or any part thereof pursuant to this section. (Cr. by ORD-09-00115, 8-11-09)

- (5) Assessment of Costs of Abatement.
- (a) The entire costs of abating any public nuisance as defined in Subsection (1) of this ordinance may be chargeable to and imposed as a special charge against the parcel or lot upon which such tree stands. The cost of abating any such nuisance which is located in or upon any park or public grounds, boulevards or public right-of-way shall be borne by the City.
- (b) The City Forester, or designee, shall keep strict account of the costs of work done under this ordinance for which special charges are to be made, stating and certifying the description of the land, lots, parts of lots or parcels of land and the amount chargeable to each. The City Forester, or designee, shall include in her/his report to the Common Council the aggregate amounts chargeable to each lot or parcel as recorded by her/him and such amounts shall be imposed as special charges against such parcels or lots pursuant to Sec. 4.09(13), MGO.

(Am. by Ord. 13,640, 6-23-04)

- (6) Transporting of Wood Prohibited. No person, firm or corporation shall transport within the City of Madison any bark bearing diseased elm wood or diseased oak wood or Emerald Ash Borer infested ash wood or material without first securing the written permission of the City Forester, or designee. (Am. by Ord. 13,640, 6-23-04)
- (7) Removal or Pruning of Oak Trees Prohibited. No person, firm or corporation shall remove, trim or prune any oak tree or portion thereof between April 1 and October 15 without first securing the written permission of the City Forester, or designee. (Am. by Ord. 11,012, 10-12-94; Ord. 13,640, 6-23-04; ORD-08-00071, 7-04-08)
- (8) Interference With City Forester Prohibited. No person, firm or corporation shall prevent, delay or interfere with the City Forester, or designee, or any of her/his agents or employees while they are engaged in the performance of duties imposed by this ordinance. (Am. by Ord. 13,640, 6-23-04)
- (9) Penalty. Any person, firm, or corporation violating any of the provisions of this ordinance shall upon conviction thereof be subject to a forfeiture of not more than five hundred dollars (\$500). Each day such violation continues shall be considered a separate offense. (Am. by Ord. 13,760, 12-14-04)

(Sec. 23.40 Am. by Ord. 9001, 11-14-86; ORD-09-00115, 8-11-09)

23.41 USE OF DDT SPRAY PROHIBITED. It shall be unlawful for any person to place DDT spray on any tree in the City of Madison.

23.42 UNLAWFUL REMOVAL OF PARKING TICKETS.

- (1) No person other than the owner or operator thereof shall remove a Notice of Traffic Violation of the Madison Police Department (parking ticket) from a motor vehicle.
- (2) Any person convicted of a violation of this section shall be subject to a penalty of not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).

23.43 UNLAWFUL SHELTERING OF MINORS.

- (1) No person, organization, agency or corporation shall, unless duly licensed under the Wisconsin Statutes or without having first obtained the permission of the parents or legal guardian of any minor or without first notifying the City of Madison Police Department of the existence of a minor described in Paragraph (a) on premises owned or operated by or under the control of such person, organization, agency or corporation:
 - (a) By any means conceal or shelter, or assist in the concealing or sheltering of any minor under the age of eighteen (18) years while the minor is under the legal custody of the parents or legal guardian and while the minor is on report with any law enforcement agency as a “missing person”, a “runaway”, or a “wanted” person; or
 - (b) Supply false information to or obstruct any police officer in the performance of her/his duty to locate or to take into custody any minor described in this section.
- (2) Any person, organization, agency or corporation violating any provision of this section shall be subject to a forfeiture of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500). (Am. by Ord. 13,760, Adopted 12-14-04)

23.44 CONSUMER TO BE OFFERED SELECTION OF CONTAINERS.

- (1) After July 1, 1971, it shall be unlawful for any person, firm or corporation licensed by the City of Madison pursuant to Chapter 125 of the Wisconsin Statutes to sell, dispense or give away fermented malt beverages or soda water beverages within the City of Madison in any container of metal, glass, plastic or other nondegradable material unless said licensed person, firm or corporation offers for sale fermented malt beverages or soda water beverages in returnable, reusable containers. (Am. by Ord. 8635, 7-19-85)
- (2) After six (6) months following the date of adoption of this ordinance, it shall be unlawful for any person, firm or corporation to sell, dispense or otherwise distribute at retail fluid milk products, including skim or skimmed, 1%, 2% or whole milk, whether fortified, homogenized or pasteurized, within the City of Madison in any container of a nonrefillable design equal to or greater than one gallon fluid volume, unless said person, firm or corporation offers for sale said fluid milk products in returnable, refillable, reusable containers. Offering of each of said milk products, such as 1% milk, in at least one size of returnable container such as one gallon, regardless of product brand, shall be deemed compliance hereunder as long as sufficient quantities are offered.

(Sec. 23.44 Am. by Ord. 5920, 7-29-77)

23.45 TRUANCY AND HABITUAL TRUANCY.

- (1) It shall be unlawful for any person in the City of Madison to be a truant or to be a habitual truant.
- (2) Definitions.
 - (a) “Acceptable excuse” has the meaning given that term in Sec. 118.15 and 118.16(4), Wis. Stats.
 - (b) “Habitual truant” means a pupil who is absent from school without an acceptable excuse for part or all of 5 or more days on which school is held during a school semester.
 - (c) “Operating privilege” has the meaning given in Sec. 340.01, Wis. Stats.
 - (d) “Truant” means a pupil who is absent from school without an acceptable excuse for part or all of any day on which school is held during a school semester.
- (3) Dispositions and Sanctions In A Case Where a Child Is Adjudged To Be A Truant.
 - (a) Dispositions.

If a person under the age of 18 is adjudged to be a truant, the municipal court may enter one or more of the following dispositions:

 1. An order for the person to attend school.
 2. A forfeiture of not more than \$50 plus costs for a first violation, or a forfeiture of not more than \$100 plus costs for any 2nd or subsequent violation committed within 12 months of a previous violation, subject to Sec. 938.37, Wis. Stats. and subject to a maximum cumulative forfeiture amount of not more than \$500 for all violations committed during a school semester. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardian of the person, or both.
 - (b) Sanctions for Violation of Dispositional Order.

If the court finds that a person violates a condition of his or her dispositional order under sec. 23.45(3), MGO, the court may impose as a sanction on the person, any combination of the following, if at the time of judgment the court explained the conditions to the person and informed the person of those possible sanctions:

 1. Suspend the person’s operating privilege, as defined in sec. 340.01(40), for not less than 30 days nor more than one year. If the person does not hold a valid operator’s license under ch. 343, other than an instruction permit under s. 343.07 or a restricted license under s. 343.08, on the date of the order issued under this subsection, the court may order the suspension or limitation to begin on the date that the operator’s license would otherwise be reinstated or issued after the person applies and qualifies for issuance or 2 years after the date of the order issued under this subsection, whichever occurs first. If the court suspends the person’s operating privilege or an approval issued under ch. 29, the court shall immediately take possession of the suspended license or approval and forward it to the department that issued the license or approval with a notice stating the reason for and the duration of the suspension.
 2. An order for the person to participate in counseling or a supervised work program or other community service work as described in Sec. 938.34(5g), Wis. Stats. The cost of any such counseling, supervised work program or other community service work may be assessed against the person, the parents or guardian of the person, or both. Any county department of human services or social services, community agency, public agency or nonprofit charitable organization administering a supervised work program or other community service work to which a person is assigned pursuant to an order under this paragraph acting in good faith has immunity from civil liability in excess of \$25,000 for any act or omission by or impacting on that person.
 3. An order for the person to remain at home except during hours in which the person is attending religious worship or a school program, including travel time required to get to and from the school program or place of worship. The order may permit a person to leave his or her home if the person is accompanied by a parent or guardian.

4. An order for the person to attend an educational program as described in Sec. 938.34(7d), Wis. Stats.
 5. An order for the department of workforce development to revoke, under Sec. 103.72, Wis. Stats., a permit under Sec. 103.70, Wis. Stats., authorizing the employment of the person.
 6. An order for the person to be placed in a teen court program as described in Sec. 938.342(1g)(f), Wis. Stats.
 7. An order for the person to attend school.
 8. A forfeiture of not more than \$500 plus costs, subject to Sec. 938.37, Wis. Stats. All of part of the forfeiture plus costs may be assessed against the person, the parents or guardian of the person, or both.
 9. Any other reasonable conditions consistent with this subsection, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults.
 10. An order placing the person under formal or informal supervision, as described in Sec. 938.34(2), Wis. Stats., for up to one year.
 11. An order for the person's parent, guardian or legal custodian to participate in counseling at the parent's, guardian's or legal custodian's own expense or to attend school with the person, or both.
- (4) Dispositions and Sanctions In A Case Where a Child Is Adjudged To Be An Habitual Truant.
- (a) Dispositions.

If a person under the age of 18 is adjudged to be an habitual truant, the municipal court may enter one or more of the following dispositions:

1. Suspension of the person's operating privilege for not less than 30 days nor more than one year. The court shall immediately take possession of any suspended license and forward it to the department of transportation together with a notice stating the reason for and the duration of the suspension.
2. An order for the person to participate in counseling or a supervised work program or other community service work as described in Sec. 938.34(5g), Wis. Stats. The cost of any such counseling, supervised work program or other community service work may be assessed against the person, the parents or guardian of the person, or both. Any county department of human services or social services, community agency, public agency or nonprofit charitable organization administering a supervised work program or other community service work to which a person is assigned pursuant to an order under this paragraph acting in good faith has immunity from any civil liability in excess of \$25,000 for any act or omission by or impacting on that person
3. An order for the person to remain at home except during hours in which the person is attending religious worship or a school program, including travel time required to get to and from the school program or place of worship. The order may permit a person to leave his or her home if the person is accompanied by a parent or guardian.
4. An order for the person to attend an educational program as described in Sec. 938.34(7d), Wis. Stats.
5. An order for the department of workforce development to revoke, under Sec. 103.72, Wis. Stats., a permit under Sec. 103.70, Wis. Stats., authorizing the employment of the person.
6. An order for the person to be placed in a teen court program as described in Sec. 938.342(1g)(f), Wis. Stats.
7. An order for the person to attend school.

8. A forfeiture of not more than \$500 plus costs, subject to Sec. 938.37, Wis. Stats. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardian of the person, or both.
9. Any other reasonable conditions consistent with this subsection, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults.
10. An order placing the person under formal or informal supervision, as described in Sec. 938.34(2), Wis. Stats., for up to one year.
11. An order for the person's parent, guardian or legal custodian to participate in counseling at the parent's, guardian's or legal custodian's own expense or to attend school with the person, or both.

(b) Sanctions For Violation of Dispositional Order.

If the court finds that a person violates a condition of his or her dispositional order under sec. 23.45(4), MGO, the court may impose as a sanction on the person, any of the following:

1. Suspension or limitation on the use of the person's operating privilege as defined under Sec. 340.01(40), or of any approval issued under ch. 29 for not more than one year. If the person does not hold a valid operator's license under ch. 343, other than an instruction permit under s. 343.07 or a restricted license under s. 343.08, on the date of the order issued under this subsection, the court may order the suspension or limitation to begin on the date that the operator's license would otherwise be reinstated or issued after the person applies and qualifies for issuance or 2 years after the date of the order issued under this subsection, whichever occurs first. If the court suspends the person's operating privilege or an approval issued under ch. 29, the court shall immediately take possession of the suspended license or approval and forward it to the department that issued the license or approval with a notice stating the reason for and the duration of the suspension.
2. Counseling or participation for not more than 25 hours in a supervised work program or other community service work under s. 938.34(5g).
3. Detention in the person's home or current residence for a period of not more than 30 days except during hours which the person is attending religious worship or a school program, including travel time required to get to and from the place of worship or school program. The order may permit a person to leave his or her home or current residence if he or she is accompanied by a parent guardian.
4. The court may petition the court assigned to exercise jurisdiction under ch. 938 and ch. 48 to impose on the person the sanction specified in 938.355(6m)(a)1g. if, at the time of the judgment the court explained the conditions to the person and informed the person of that possible sanction for a violation.
5. An order for the person to attend an educational program as described in Sec. 938.34(7d), Wis. Stats.
6. An order for the department of workforce development to revoke, under Sec. 103.72, Wis. Stats., a permit under Sec. 103.70, Wis. Stats., authorizing the employment of the person.
7. An order for the person to be placed in a teen court program pursuant to Sec. 938.342(1g)(f), Wis. Stats.
8. An order for the person to attend school.
9. A forfeiture of not more than \$500 plus costs, subject to Sec. 938.37, Wis. Stats. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardian of the person, or both.

10. Any other reasonable conditions consistent with this subsection, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults.
 11. An order placing the person under formal or informal supervision, as described in Wis. Stat. § 938.34(2), for up to one year.
 12. An order for the person's parent, guardian or legal custodian to participate in counseling at the parent's, guardian's or legal custodian's own expense or to attend school with the person, or both.
- (5) Exception for Habitual Truants.
- (a) A person incurs no liability under this ordinance if appropriate personnel of the school or school district in which the child is enrolled have not, within one year prior to the commencement of prosecution under this ordinance, done all of the following:
 1. Met with the child's parent or guardian to discuss the child's truancy, or attempted to meet with the child's parent or guardian and received no response or were refused;
 2. Provided an opportunity for educational counseling to the child to determine whether a change in the child's curriculum would resolve the child's truancy and considered curriculum modifications under Wis. Stat. § 118.15(1)(d);
 3. Evaluated the child to determine whether learning problems may be a cause of the child's truancy and, if so, have taken steps to overcome the learning problems except that the child need not be evaluated if tests administered to the child within the previous year indicate that the child is performing at his or her grade level; and
 4. Conducted an evaluation to determine whether social problems may be a cause of the child's truancy and, if so, have taken appropriate action or made appropriate referrals.
 - (b) Paragraph (5)(a)1. of this section does not apply if a meeting under Wis. Stat. § 118.16(2)(cg)(3), is not held within 10 school days after the date that the notice under subsection (2)(cg) is sent.
 - (c) Paragraphs (5)(a)2., 3. and 4. of this section do not apply if the school attendance officer provides evidence that appropriate school personnel were unable to carry out the activity due to the child's absences from school.
- (6) References to Statutes. References to specific statutory sections wherever used in this ordinance shall mean the Wisconsin Statutes of 1987-88 as from time to time amended, modified, repealed or otherwise altered by the State Legislature.
- (7) Severability. If any section or part of this ordinance is adjudged unconstitutional or invalid by any court of competent jurisdiction, the validity of the remainder of this ordinance shall not be affected thereby and shall be in full force and effect as if the said unlawful section or sections were not originally a part hereof.
- (8) The court shall report by January 31 of each year to the Public Safety Review Committee, the Board of Education-Common Council Liaison Committee and Common Council on the number and dispositions of truancy cases referred to it. The Common Council shall request similar information from the Madison Metropolitan School District no later than January 31 of each year regarding the number of truants and frequency of use of this Ordinance. (Am. by Ord. 13,113, 8-2-02; ORD-09-00052, Pub. 4-2-09, Eff. 8-1-09)
- (9) The Madison Metropolitan School District shall continue to monitor the truancy process to determine the effect of truancy citations and the possibility of a driver's license suspension on school attendance. The District shall report its findings in an annual "Truancy Report" which shall be submitted to the Common Council and made available to the public. (Am. by Ord. 10,682, 6-25-93)

(Sec. 23.45 Cr. by Ord. 10,181, 1-17-91; Am. by Ord. 12,525, 1-21-00)

23.46 UNAUTHORIZED PRESENCE ON SCHOOL PROPERTY PROHIBITED.

- (1) It shall be unlawful for any student who is under suspension, expulsion, exemption or other discipline excluding him from attending school under the jurisdiction of the Madison Board of Education, or for any person, not a student presently enrolled to attend school under the jurisdiction of the Madison Board of Education or not an employee of said Madison Board of Education or not a parent or guardian of a student so enrolled or not an otherwise "authorized person" to be present within any school building or upon any school grounds under the jurisdiction of said School Board without having first secured authorization to be there from the principal or other person in charge of said school building or school grounds, except while in direct route to secure said authorization. "Authorized person" shall include any person who is present at any school building or school grounds for any purpose previously authorized by the Board of Education or its designee.
- (2) Any person shall, upon request of the principal or other person in charge of any school building or upon any school grounds under the jurisdiction of said School Board, or upon request of any police officer, display any written authorization to be present which he may have, in his possession or otherwise explain his presence or his status as such student, employee, parent or guardian, or "authorized person" referred to in Subsection (1) hereof.
- (3) All entrances to the school buildings referred to in Subsection (1) hereof shall be posted with a notice stating "Entry into School Building by Unauthorized Persons Prohibited." All school grounds referred to in Subsection (1) hereof shall be posted with a notice stating "Entry Upon School Grounds by Unauthorized Persons Prohibited."
- (4) Penalty. Any person who shall violate any of the provisions of this section shall upon conviction be subject to a forfeiture of not less than ten dollars (\$10) nor more than five hundred dollars (\$500) for each offense.
- (5) This ordinance shall only apply to property under the jurisdiction of the Madison Board of Education within the jurisdictional limits of the City of Madison.

23.47 RESERVED FOR FUTURE USE. (R. by ORD-05-00202, 1-3-06)**23.48 PUBLIC UTILITIES TO PROVIDE NOTICE OF PROPOSED SERVICE DISCONNECTIONS.**

- (1) It shall be unlawful for any public utility as defined in Wis. Stat. § 196.01(1), except telephone public utilities, to disconnect any residential utility service in the City of Madison unless said utility has complied with the following requirements:
 - (a) A public utility shall not disconnect or interrupt service to residential customers unless the utility first notifies the customer in writing of its intent to disconnect or interrupt such service. This provision shall not apply in the case of:
 1. Emergency repairs, or
 2. Violation of the utility rules pertaining to the use of service in a manner which interferes with the services of others, or to the operation of nonstandard equipment, if the customer has been first notified and provided with reasonable opportunity to remedy the situation.
 - (b) Such notice shall be at least five (5) business days in advance of the proposed disconnecting or interruption of service.
 - (c) Such notice shall include in bold face type, and set forth conspicuously, the following statement:

"City of Madison residents may notify the Director of Public Health, Room 507, City-County Building, telephone 266-4840, who has the authority to declare a medical emergency if disconnection of service would result in a serious threat to the health, safety or well-being of any resident of your premises."

- (2) In determining what constitutes a serious threat to health, safety or well-being, the Director of Public Health shall consider the following criteria; but these shall not be considered exclusive thereto:
 - (a) Individual medical histories and characteristics of residents facing disconnection of said utility services.
 - (b) The effect of the lack of heat, light, hot water, cooking capability and refrigeration capability on residents facing disconnection of said utility services.
 - (c) Any other factors in the individual disconnection case which would seriously threaten a resident's health, safety or well-being.
- (3) A utility shall postpone the disconnection of service for twenty-one (21) days if the Director of Public Health determines that there is or could be a serious threat to the health, safety or well-being to any person facing disconnection of said utility service, and he has notified the utility concerned that said disconnection shall be postponed for a period of time not to exceed twenty-one (21) days. The postponement may be extended once by renewal of the notice by the Director of Public Health.
- (4) The Director of Public Health shall report all cases where a postponement has been issued to the Director of Social Services. (Am. by Ord. 7127, 10-23-80)

23.49 POSSESSION OF EXOTIC OR WILD ANIMALS.

(1) Definitions.

“Circus” means a scheduled event staged by a traveling company with mobile facilities in which entertainment consisting of a variety of performances by acrobats, clowns or trained animals is the primary attraction or principle business.

“Exotic Animal” means any animal that is not normally domesticated in the United States or is wild by nature.

“Person” means an individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

“Possess” means to own, control, restrain, transport, or keep.

“Public zoo or aquarium” means a zoo or aquarium that is operated by the state or city or that is an accredited member of the American Zoo and Aquarium Association.

“Veterinarian” means a person who is licensed in this state to practice veterinary medicine under Wis. Stats. Chap. 453 and who is certified under rules promulgated by the department of agriculture, trade and consumer protection.

“Wild Animal” means any of the following animals, whether bred in the wild or in captivity, and also any of their hybrids with domestic species. The animals listed in parentheses are intended to act as examples and are not to be construed as an exhaustive list or limit the generality of each group of animals, unless otherwise specified.

- (a) Nonhuman primates and prosimians (chimpanzees, monkeys);
- (b) Felids, except domesticated cats;
- (c) Canids (wolf, coyotes, foxes) except domesticated dogs;
- (d) Prairie dogs; (Am. by Ord. 13,380, 8-2-03)
- (e) Elephants;
- (f) Cocodilians (alligators, crocodiles);
- (g) Marsupials (kangaroos, opossums);
- (h) Ungulates (hippopotamus, rhinoceros);
- (i) Hyenas;
- (j) Mustelids (skunks, otters, badgers) except ferrets;
- (k) Procyonids (raccoons, coatis);
- (l) Dasypodidae (anteaters, sloth, armadillos);
- (m) Viverrids (mongooses, civets, genets);
- (n) Reptilia over ten (10) feet in length (boa constrictors, pythons);
- (o) Venomous reptilia.

- (2) Intent and Purpose. The Common Council of the City of Madison hereby finds that wild animals are inherently dangerous and do not adjust well to captive environment. It is the intent of the Common Council to protect the public against health and safety risks that wild animals pose and hereby prohibit the possession of wild animals within the City of Madison.
- (3) It shall be unlawful for any person to possess, sell or purchase an exotic or wild animal.
- (4) Exceptions. The following persons or entities may possess exotic or wild animals:
 - (a) A person licensed by the State under Wis. Stats. Chap. 169.
 - (b) A veterinarian, for the purpose of providing medical treatment to wild animals.
 - (c) A public zoo or aquarium.
 - (d) A circus.
 - (e) A person authorized by the Department of Natural Resources.
- (5) Penalties. Any person convicted of a violation of this section shall be subject to a forfeiture of not more than five hundred dollars (\$500).

(Cr. by Ord. 13,328, 5-28-03)

23.495 EXHIBITION OF CERTAIN ANIMALS.

- (1) No person may display for the purpose of public viewing the following animals:
 - (a) Cougars.
 - (b) Ursids (bear).
 - (c) Any animal designated by the Department of Natural Resources as a harmful wild animal. (Cr. by Ord. 13,380, 8-2-03)
- (2) Exception. This section shall not apply to the following:
 - (a) Persons or entities which have received authorization from the Department of Natural Resources under Wis. Stats. Chap. 169.
 - (b) A public zoo and aquarium.
 - (c) A veterinarian for the purposes of providing medical treatment to the animal.

(Cr. by Ord. 13,328, 5-28-03)

23.50 SALE OF CERTAIN TURTLES PROHIBITED.

- (1) Turtles Declared a Danger to the Public Health and Welfare and Against Public Policy. Recently turtles have been found to be a source of salmonella infection of people and as a result they are hereby declared to be a danger to the public health and welfare and against public policy
- (2) Unlawful to Sell, Dispense, Give Away, or Deal in Turtles. No person, firm or corporation shall commercially sell, dispense, give away or deal in any red ear slider (*Pseudemys scripta elegans*), baby maps (*Graptemys geographica*) or baby southern painted (*Chrysemys picta dorsals*) turtles to any other person. This subsection shall not apply to a governmental agency using turtles for display or research purposes.

23.51 PLAYING GOLF ON SCHOOL PROPERTY PROHIBITED.

- (1) It shall be unlawful for any person to play golf, hit a golf ball or cause a golf ball so hit to land upon any school grounds under the jurisdiction of the Madison Board of Education except when participating in a course of instruction under the jurisdiction of the Madison Board of Education.
- (2) This section shall only apply to property under the jurisdiction of the Madison Board of Education within the jurisdictional limits of the City of Madison.
- (3) Penalty. Any person who shall violate any of the provisions of this section shall, upon conviction, be subject to a forfeiture of not less than ten dollars (\$10) nor more than one hundred dollars (\$100) for each offense.

(Section 23.51 Cr. by Ord. 4665, 8-5-74)

23.52 RESERVED FOR FUTURE USE.**23.53 TELEPHONE NUMBER TO BE ON UNATTENDED VENDING MACHINES.**

The owner or licensee shall securely affix or cause to be affixed, in a conspicuous place within view of persons using each unattended vending machine, a notice bearing a telephone number to call in case of complaint or emergency. "Vending machine" in this section means any machine or device that upon the insertion of a coin or slug, or which by any automatic attachment, vends merchandise or service of any kind or character, including but not limited to, food or beverage dispensing machines and all machines in unattended laundromats. Any person convicted of a violation of this section may be subject to a forfeiture of not less than twenty dollars (\$20) nor more than forty dollars (\$40). (Am. by Ord. 6097, 1-6-78)

23.54 RETAIL THEFT.

- (1) Any person who does any of the following may be penalized as provided in Subsection (9):
 - (a) Intentionally alters indicia of price or value of merchandise of a merchant without the merchant's consent and with intent to deprive the merchant of possession, or the full purchase price, of the merchandise. (Am. by Ord. 13,417, 10-4-03)
 - (b) Takes or carries away, transfers, conceals, or retains possession of property of the merchant or merchandise held for resale by the merchant without the merchant's consent and with intent to deprive the merchant permanently of possession, or the full purchase price, of the merchandise.
- (2) Definitions. In this section:
 - (a) "Intentionally" has the meaning designated in Sec. 939.23(3), Wis. Stats.
 - (b) "Merchandise" means one or more items of property with a total retail value of \$.01 through \$200 exclusive of sales tax. (Am. by Ord. 13,192, 11-26-02)
 - (c) "Merchant" has the meaning designated in Sec. 402.104(3), Wis. Stats., and includes any innkeeper, motelkeeper or hotelkeeper as defined in Sec. 50.50, Wis. Stats.,
 - (d) "Peace officer" has the meaning designated in Sec. 939.22(22), Wis. Stats.
 - (e) "Property" means one or more items of merchandise with a total retail value of \$.01 through \$200 exclusive of sales tax. (Am. by Ord. 13,192, 11-26-02)

- (f) “Transfer” has the meaning designated in Sec. 939.22(40), Wis. Stats.
 - (g) “Value of merchandise” has the meaning designated in Sec. 943.50(1)(b), Wis. Stats.
 - (h) “With intent to” has the meaning designated in Sec. 939.23(4), Wis. Stats.
 - (i) “Without consent” has the meaning designated in Sec. 939.22(48), Wis. Stats.
- (3) The intentional concealment of unpurchased merchandise which continues from one floor to another or beyond the last station for receiving payments in a merchant’s store is evidence of intent to deprive the merchant permanently of possession of such merchandise without paying the purchase price thereof.
 - (4) The discovery of unpurchased merchandise concealed upon the person or among the belongings of such person or concealed by a person upon the person or among the belongings of another is evidence of intentional concealment on the part of the person so concealing such goods.
 - (5) A merchant, a merchant’s adult employee, or a merchant’s security agent who has reasonable cause to believe that a person has violated this ordinance in her or his presence may detain the person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer. The detained person must be promptly informed of the purpose for the detention and be permitted to make phone calls, but she or he shall not be interrogated or searched against her or his will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. The merchant, merchant’s adult employee, or merchant’s security agent may release the detained person before the arrival of a peace officer.
 - (6) A merchant, a merchant’s adult employee, or a merchant’s security agent is privileged to defend property as set forth in Sec. 939.49, Wis. Stats. Any merchant, merchant’s adult employee, or merchant’s security agent who acts in good faith in any act authorized under Subsection (5) is immune from civil or criminal liability for those acts.
 - (7) Pursuant to Sec. 66.0107 and Sec. 943.50(3m)(a), Wis. Stats, in any action or proceeding for violation of this ordinance, duly identified and authenticated photographs of merchandise which was the subject of the violation may be used as evidence in lieu of producing the merchandise.
 - (8) Severability. If any section or part of this ordinance is adjudged unconstitutional or invalid by any court of competent jurisdiction, the validity of the remainder of this ordinance shall not be affected thereby and shall be in full force and effect as if said unlawful section was not originally a part hereof.
 - (9) Penalties.
 - (a) Any person violating any section of this ordinance shall be subject to a forfeiture of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), exclusive of costs.
 - (b) Any person violating any section of this ordinance may be subject to restitution as set forth in Sec. 800.093, Wis. Stats.
 - (10) (R. by Ord. 11,203, 3-16-95)
(Sec. 23.54 Cr. by Ord. 10,980, 9-14-94)

23.55 RESERVED FOR FUTURE USE.**23.56 PRIVATE PARKING ENFORCEMENT REGULATED.**

- (1) It shall be unlawful for any private parking enforcement service or any representative, agent, or any employee of a private parking enforcement service to immobilize, or permit to be immobilized, a vehicle without strict adherence to the requirements set forth in this section.
- (2) Definitions used in this Section:
 - (a) "Immobilization device" means any device, mechanical or otherwise, which makes a motor vehicle inoperable or unable to be moved without causing damage to the vehicle.
 - (b) "Parking area" means an area used for parking that is not on a highway.
 - (c) "Operator" has the meaning given in Sec 340.01(41), Wis. Stats.
 - (d) "Parking enforcer" means a person who enforces restrictions against unauthorized parking. The term includes a person who owns or operates a parking area and any employees or agents of an owner or operator regardless of whether they have obtained a City of Madison "Parking Enforcer's License". However, this term does not include government agencies or government employees who are acting in their official capacities.
 - (e) "Removal fee" means a fee charged by a parking enforcer to remove an immobilization device, including any amounts imposed for parking in violation of a restriction against unauthorized parking.
 - (f) "Unauthorized parking" means parking a motor vehicle in a parking area contrary to a sign posted under Sec. 346.55(4), Wis. Stats.

(Am. by Ord. 12,041, 3-2-98)

- (3) The owner or operator of a parking area in which immobilization devices may be used shall post and maintain in a manner that is clearly visible to operators entering the parking area a sign at each vehicular entrance to the parking area. At least one additional sign shall be posted for every 10 parking spaces in the parking area, all such signs to be at least 12 inches by 18 inches in size and to clearly indicate all of the following:
 - (a) That unauthorized parking is prohibited in the parking area.
 - (b) That an immobilization device may be used in the parking area to enforce restrictions against unauthorized parking.
 - (c) Whether a removal fee will be charged to remove an immobilization device and, if so, the amount of the fee.

(Sec. 23.23(3) R. and ReCr. by Ord. 12,041, 3-2-98)

- (4) Before using an immobilization device a parking enforcer shall:
 - (a) Notwithstanding Sec. 346.94(4), Wis. Stats., at the time of immobilization of a motor vehicle, place a sequentially numbered written notice in a reasonably secure manner on the motor vehicle that clearly states all of the following:
 1. The name of the parking enforcer and a telephone number that a person may call to request the removal of the immobilization device.
 2. The amount of the removal fee, if any.
 3. The terms of the deferral agreement described in Subsec (9)(b).
 4. All of the information required by Subsection (6)(b)1.-6.
 - (b) Have a person available 24 hours a day either at the parking area or at the telephone number shown on the notice described in par.(a)1. to take requests for removal and to remove the immobilization device.

(Sec. 23.23(4) R. and ReCr. by Ord. 12,041, 3-2-98)

- (5) A representative, agent, or any employee of a private parking enforcement service shall respond to the location of the immobilized vehicle of an owner or operator who has requested that any immobilization device utilized by that private parking enforcement service be removed from that vehicle within sixty minutes of that request, or within ten (10) minutes of a request made by an employee of the Madison Police Department acting in their official capacity. (Am. by Ord. 12,041, 3-2-98)
- (6) Upon responding to a request for service pursuant to Subsection (5), a representative, agent, or employee of a private parking enforcement service shall remove any immobilization device from the vehicle of the operator or owner requesting said service without undue delay. However, before removing an immobilization device a parking enforcer shall:
- (a) Display prominently an identification card that identifies that person as a parking enforcer and that contains a photograph of that person.
 - (b) Inform the owner, lessee or operator of the motor vehicle, orally and in writing, before removing an immobilization device, of all of the following:
 - 1. If a removal fee is charged, that the owner, lessee or operator is required either to pay the removal fee or to sign a deferral agreement described in Subsection (9)(b).
 - 2. That a parking enforcer may commence legal action to collect any removal fee that has not been paid within 14 days after the removal of an immobilization device.
 - 3. That the owner, lessee or operator of an immobilized motor vehicle may contest the propriety of the use of an immobilization device on her or his motor vehicle or the validity of a removal fee using the process described in Sec. 23.565 and may contest any legal action commenced to collect a removal fee.
 - 4. That, except for the payment of the removal fee or the signing of a deferral agreement, no person may be required to do anything to have an immobilization device removed.
 - 5. That, if a parking enforcer uses an immobilization device on a motor vehicle that is not parked in violation of a restriction against unauthorized parking, the owner, lessee or operator shall not be required to pay a removal fee and the parking enforcer shall be liable to the owner or lessee of the motor vehicle for an amount equal to the removal fee.
 - 6. Such notice must include the name of the private parking enforcement service and a telephone number for the immobilized vehicle operator or owner to call to request that any immobilization device be removed from the vehicle.
 - 7. Any person signing a deferral agreement as described in Subsec. (9)(b) shall be immediately provided with a copy of the appeals form described in Sec. 23.565(1).
 - (c) It shall not be a requirement that the information required to be given in Paragraphs 1. through 6. above be presented in the exact language of this ordinance, but that the language used gives the same meaning and effect intended by this ordinance.

(Am. by Ord. 12,041, 3-2-98)

- (7) It shall be unlawful for any person to require any of the following of any person as a condition of removing any immobilization device from a vehicle owned or operated by that person:
- (a) Payment of money;
 - (b) Transfer of goods;
 - (c) Performance of services;
 - (d) Waiver of any legal rights or remedies except as specified in subsection (9)(b) and Sec. 23.565, Madison General Ordinances;
 - (e) Release of a credit card number;
 - (f) Release of a business address;
 - (g) Release of a business telephone number
- (Am. by Ord. 12,041, 3-2-98)
- (8) It shall be unlawful for any person to coerce any person to do anything listed in subsection (7) by accusing or threatening to accuse any person of a crime or offense.
- (9) Prior to the removal of an immobilization device, the owner, lessee or operator of an immobilized motor vehicle shall do either of the following:
- (a) Pay the removal fee.
 - (b) Sign a deferral agreement under which the person signing the agreement agrees to pay the removal fee to the parking enforcer or contest the removal fee, or the propriety of the use of an immobilization device on her or his motor vehicle, using the process described in Sec. 23.565, Madison General Ordinances, within 14 days after the immobilization device is removed.
- (Sec. 23.56(9) R. and ReCr. by Ord. 12,041, 3-2-98)
- (10) Whenever a deferral agreement is signed, the parking enforcer shall provide the owner or operator of the motor vehicle a copy of the signed deferral agreement.
- (Sec. 23.56(10) R. and ReCr. by Ord. 12,041, 3-2-98)
- (11) A person who signs a deferral agreement and does not do any of the activities required by that deferral agreement within 14 days after the removal of the immobilization device shall pay an amount not to exceed three times the removal fee plus the reasonable costs incurred to collect the removal fee to the parking enforcer within 30 days after the removal of the immobilization device.
- (Sec. 23.56(11) R. and ReCr. by Ord. 12,041, 3-2-98)
- (12) A parking enforcer who uses an immobilization device on a motor vehicle that is not parked in violation of a restriction against unauthorized parking shall pay an amount equal to the removal fee to the owner of the motor vehicle within 14 days after the determination that the immobilization device was used improperly.
- (Cr. by Ord. 12,041, 3-2-98)
- (13) The maximum removal fee which may be charged by a parking enforcer is \$50.00.
- (Cr. by Ord. 12,041, 3-2-98)
- (14) All private parking enforcement services shall keep a chronological monthly log or record of the vehicles that have been immobilized. The log or record shall indicate a description of the vehicle, the location of the immobilization, the time of the request for service as described in Subsection (5), and the time of the removal of the immobilization device. A copy of this log or record shall be delivered to the Chief of Police every month. (Renumbered by Ord. 12,041, 3-2-98)
- (15) This section shall not be construed so as to prohibit enforcement of Section 12.128 of the Madison General Ordinances. (Renumbered by Ord. 12,041, 3-2-98)
- (16) This section is not intended to apply to the immobilization of vehicles pursuant to Section 346.65 of the Wisconsin Statutes. (Renumbered by Ord. 12,041, 3-2-98)

- (17) No person shall apply any immobilization device to any vehicle when such application would leave such a vehicle obstructing a parking space for a person with a disability, a sidewalk or private driveway, a fire lane or a public highway. No person shall apply any immobilization device to any vehicle when such application would result in an immediate and reasonably apparent threat to life, health, or public safety. (Cr. by Ord. 12,041, 3-2-98; Am by ORD-06-00099, 8-2-06)
- (18) In addition to the other penalties provided herein, any person who violates any provisions of this section may be required to forfeit not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000). (Renumbered by Ord. 12,041, 3-2-98)
- (19) If any provision of this ordinance is invalid or unconstitutional, or if the application of this ordinance to any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or application. (Cr. by Ord. 12,041, 3-2-98)

(Sec. 23.56 Am. by Ord. 12,041, 3-2-98)

23.565 VEHICLE IMMOBILIZATION APPLICATION FEE ADMINISTRATIVE APPEAL.

- (1) Any person who signs a deferral agreement as described in Sec. 23.56(9)(b) of these ordinances shall file an appeal with the Transit and Parking Commission. Such an appeal shall be filed within 14 days of the removal of an immobilization device on the form specified by the Transit and Parking Commission.
- (2) Upon receipt of the appeal, the Transit and Parking Commission shall forward a copy of the completed form to the Parking Enforcer who had immobilized the applicant's vehicle. The Parking Enforcer shall then have 14 days to file a response with the Transit and Parking Commission. Failure to file a response shall constitute an admission of each and every material allegation of the appellant.
- (3) The Transit and Parking Commission shall decide the appeal based upon the foregoing written submissions.
- (4) The issue to be decided upon appeal shall be limited to the propriety of the use of an immobilization device and to a determination of whether the amount of the removal fee was within the limits set by ordinance. The burden of proof is upon the Parking Enforcer who must prove by a preponderance of the evidence that the appellant's vehicle was illegally parked on private property, that such private property was properly posted pursuant to Sec. 23.56(3), Madison General Ordinances, and that the removal fee sought is within the limits set forth in Sec. 23.56(13).
- (5) The Transit and Parking Commission shall notify the parties of its decision in writing. If the decision is for the appellant, the Transit and Parking Commission shall order the Parking Enforcer to pay the appellant an amount equal to the removal fee originally sought from the appellant by the Parking Enforcer.
- (6) A Parking Enforcer who has been ordered to make a payment under Subsec. (5) shall make such payment within 14 days of the receipt of the Parking Subcommittee's decision.
- (7) Any Parking Enforcer who fails to make a payment as set forth in Subsecs. (5) and (6) may be required to forfeit not less than one hundred dollars nor more than two hundred dollars.

(Cr. by Ord. 12,042, 3-2-98)

23.57 COMPLIANCE INSPECTION FEES.

- (1) Any person who shall fail or neglect to comply with any lawful order of the Director of the Building Inspection Division issued pursuant to the provisions of this chapter may be assessed fifty dollars (\$50) per compliance inspection, as defined in Sec. 27.03(2), MGO, that does not result in compliance with the order.
- (2) The Department of Planning and Community and Economic Development shall keep an accurate account of all unpaid inspection fees incurred for compliance inspection services rendered and report the same to the City comptroller, who shall annually prepare a statement of these special charges at each lot or parcel of land and report the same to the City Clerk, and the amount therein charged to each lot or parcel of land shall be by said Clerk entered in the tax roll as a special charge against said lot or parcel of land, and the same shall be collected in all respects like other special charges upon real estate as provided in Wis. Stat. § 66.0627.

(Cr. by ORD-10-00058, 6-11-10)

23.58-**23.59 RESERVED FOR FUTURE USE.**

23.60 PENALTIES FOR VIOLATIONS OF THIS CHAPTER. Any person violating any of the provisions of this chapter for which no penalty is specifically provided shall be subject to a forfeiture of not more than five hundred dollars (\$500). (Am. by Ord. 9623, 11-11-88; Ord. 13,328, 5-28-03; Ord. 13,670, Adopted 12-14-04)