

TOWN OF BLACK BROOK
An Ordinance Amending the Town Public Nuisance Ordinance 10-1-98

SECTION I. SECTION AMENDED.

Town of Black Brook Ordinance Number 10-1-98 is hereby amended to read as follows:

SECTION 1: PUBLIC NUISANCES PROHIBITED

No person shall erect, contrive, cause, continue, maintain, or permit to exist any public nuisance within the Town of Black Brook, Polk County, Wisconsin.

SECTION 2: DEFINITIONS

(A) Public Nuisance. A public nuisance is an object, act, occupation, condition or use of property which shall continue for such length of time as to:

- (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
- (2) In anyway render the public insecure in life or in the use of property.
- (3) Greatly offend the public morals or decency.
- (4) Unlawfully and substantially interfere with, or obstruct, or tend to obstruct or render dangerous for passage any street, avenue, alley, highway, navigable body of water or other public way or the use of public property.

(B) Public Nuisance Affecting Health. The following acts, omissions, places, conditions and objects are hereby specifically declared to be public nuisances, but such enumeration shall not be construed to exclude other health nuisances or hazards coming within the definition of subsection (A) of this Section 2.

- (1) All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.
- (2) Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in an appropriate sanitary manner within 72 hours after the death of such animal, bird, or fowl.
- (3) Accumulation of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material whatsoever in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed.
- (4) Privy vaults and garbage cans which are not fly tight.
- (5) All noxious weeds and other rank growth of vegetation. "Noxious weeds" as used herein shall mean spotted knapweed, wild parsnip, Canada thistle, leafy spurge, and field bindweed and any other noxious weeds as determined by the Town Board.
- (6) All animals running at large.
- (7) All abandoned wells not securely covered or secured from public use.
- (8) Any place in the Town where any nauseous, noxious, polluted or unwholesome liquid, waste or substance are located on private or public land, including town roads, highways, bridges, sidewalks, alleys or other public lands owned or controlled by the

Town, and those conditions are not timely removed within forty-eight (48) hours after receipt of written notice from the Town Board.

(9) Noxious emission odor areas. Any place in the town where noxious odor, stench, or gas escapes or is emitted into the open air from sources located on public or private land, and these conditions are not timely removed or discontinued within seventy-two (72) hours after receipt of written notice to remove from the town board. In this subsection, "noxious odor" means an odor that is extremely repulsive to the senses of ordinary persons in the town and that seriously annoys or causes serious discomfort or serious injury to the health or causes serious inconvenience to the health or safety of a significant number of persons within the town, as determined by the town board. This Paragraph "(9)" may not be used to cite a farm operation within the Town of Black Brook which is operating in compliance with all applicable regulations for such operations, including those promulgated from the Wisconsin Department of Natural Resources.

(10) Rat or vermin areas. Any place in the town where rats or other vermin are located or frequent on public or private land, and those conditions are not removed or destroyed within seventy-two (72) hours after receipt of written notice to remove from the town board. Vermin subject to this paragraph include, but are not limited to, all of the following: rats, mice, cockroaches.

(11) Any place in the town where the body of a deceased person or parts of a deceased person are located and buried on private or public land in the town without written approval of the town board. This paragraph does not apply to any established cemetery or burial site grounds approved, owned, and operated in accordance with chapter 157, Wis. Stats.

(12) Any place or solid waste facility in the town where the discharge, disposal, storage, or treatment of hazardous, toxic, or solid waste occurs on private or public lands without approval and licensing or permitting of the discharge, disposal, storage, or treatment by all proper federal, state, county, and town governing authorities and full compliance with all applicable laws, rules, regulations, or ordinances of the federal, state, county, or town. To constitute a public nuisance under this paragraph, an area, facility, or site must threaten or cause serious discomfort or serious injury to the health or cause serious inconvenience to the health or safety of a significant number of persons within the town, as determined by the town board.

(C) PUBLIC NUISANCES AFFECTING PEACE AND SAFETY. The following acts, omissions, places, conditions, and objects are hereby declared to be public nuisances affecting peace and safety; however such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the provisions of subsection (A) of this section.

(1) All signs and billboards, awnings and other structures over or near streets, sidewalks, public grounds, or places frequented by the public, so situated or constructed as to endanger the public safety.

(2) All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway which purports to be or may be mistaken as an official traffic control device, signal or which because of its color, location, brilliance or manner of operation interferes with the effectiveness of any such device, sign or signal.

(3) All trees, hedges, billboards, or other obstructions which prevent persons driving vehicles on public streets, alleys, or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk. Any such obstruction which falls within a vision clearance triangle extending 25 feet horizontally along each street line from their intersection and within a vertical clearance of 6 feet shall be presumed to be a violation of this subsection:

(4) All limbs of trees which project over and less than 8 feet above the surface of a public sidewalk, or 14 feet above the surface of the portion of the street, highway, or alley traveled by vehicles.

(5) The use, sale or display of fireworks except as provided by the laws of the State of Wisconsin and ordinances of the Town.

(6) Any place in the town where a building or structure, the contents of a building or structure, or any associated electrical, heat, water, or sewer system located on public or private lands is so old, dilapidated, or out of repair as to be dangerous, unsafe, unsanitary, or otherwise unfit for human habitation, and the conditions that are dangerous, unsafe, unsanitary, or otherwise render the building unfit for human habitation.

(7) All wires over streets, avenues, alleys, highways or public grounds which are strung less than fifteen (15) feet above the surface thereof

(8) Any place in the town where any unreasonably loud, discordant, and unnecessary sound conditions or vibrations, including sounds from vehicles, equipment, machinery, guns, fireworks, or enclosed domestic or other animals, or from any human-created or -aided sounds, including alleged music, is located on private or public land without written approval of the town board.

(9) Any place in the town where unpermitted, abusive, indecent, profane, or boisterous sounds, unpermitted fighting, brawling, or rioting, or other unpermitted disorderly conduct conditions, are located or occur on private or public lands.

(10) The keeping or harboring of any animal or fowl which be frequently or habitually howling, yelping, barking, crowing or making other noises which greatly annoy or disturb a neighborhood or any considerable number of persons within the Town. Any animal exhibiting any of the characteristics described in Section 5(A)(1) of the Animal Control Ordinance of the Town of Black Brook shall also constitute a nuisance under the provision of this Paragraph "(C)" of this Ordinance.

(11) All obstruction of streets, alleys, highways, sidewalks, crosswalks and all excavation in or under the same, except as permitted by the ordinances of the Town of Black Brook or which although made in accordance with such ordinances, are kept or maintained for unreasonable or illegal length of time after the purpose thereof has been accomplished.

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

(13) All abandoned refrigerators or iceboxes from which the doors, and other covers have not been removed or which are not equipped with a device for opening from the inside.

(14) Repeated or continuous violations of the ordinances of the Town or Wisconsin Statutes relating to the use or storage of flammable liquids.

(15) Any place in the town where live dangerous wild animals are kept, sold, or in any manner controlled or possessed on private or public land without written approval of the town board and the animals are not removed or destroyed within seventy-two (72) hours

after receipt of written notice to remove from the town board unless written approval of the town board is obtained within said time. To constitute a dangerous wild animal, under this paragraph, the species of animal must pose a threat to the safety of persons within the town, including a keeper of the animal, as determined by the town board. It is not necessary that the town board find that a specific animal is dangerous in order to find a nuisance under this paragraph. For purposes of this ordinance, dangerous wild animals include, but are not limited to, all of the following species of animals:

1. Nonhuman primates and prosimians, including chimpanzees and monkeys.
2. Felids, except domesticated cats of the subspecies *Felis silvestris catus*, including lions, tigers, and other felids generally referred to as big cats;
3. Canids, except domesticated dogs of the subspecies *Canis lupus familiaris*, including foxes not born, bred, and raised in captivity, and all wolves, coyotes, and wolf hybrids.
4. Ursids, including all bears.
5. Elephants.
6. Crocodylians, including alligators and crocodiles.
7. Marsupials, including kangaroos, wallabies, and opossums.
8. Hippopotami.
9. Rhinoceroses.
10. Hyenas.
11. Mustelids, except domestic ferrets, including skunks, otters, and badgers.
12. Procyonids, including raccoons and coatis.
13. Dasypodidae, including anteaters, sloth, and armadillos.
14. Viverrids, including mongooses, civets, and genets.
15. Reptilia over three feet in length, including boa constrictors, pythons, and any other snakes.
16. Venomous reptilia.
17. Cervids, except farm-raised deer that are kept by a person registered under s. 95.55, Wis. stats.
18. Camelids, except South American camelids.

(D) PUBLIC NUISANCES – OTHER. The following acts, omissions, places, conditions and objects are hereby specifically declared to be public nuisances offending the comfort, health; repose or safety of the Town of Black Brook; but such enumeration shall not be construed or exclude other nuisances within the definition of subsection (A) of this section:

- (1) All owners of property located within the Town of Black Brook who fail to keep their premises free of litter, trash, or debris shall be in violation of this subsection.
- (2) All property owners within the Town of Black Brook who allow their property to accumulate trash, litter or debris shall be considered to be in violation of this subsection.
- (3) "Litter" as used in this ordinance includes, but is not limited to, trash and wastepaper lying scattered about; and an untidy accumulation of objects of any kind.
- (4) "Trash" as used in this ordinance includes, but is not limited to, something or object(s) worth little or nothing or something or object(s) in a crumbled, broken or inoperable condition.

(5) "Debris" means any litter, junk, wood, bricks, paper, cement, concrete blocks, or any other unsightly accumulation of items or materials that may tend to depreciate property values in the adjacent or near area, create a blighted condition, present a substantial threat to public health or safety, or create a public nuisance or a public safety or health hazard, except when such items are determined by the town board or town committee or other agent of the town to be stored or housed out of public view and are treated and maintained so as not to be a public nuisance.

SECTION 3: JUNKED AND ABANDONED VEHICLES.

(A) **Junked Automobiles, etc.** No disassembled, inoperable, unlicensed, junked, or wrecked motor vehicles, truck bodies, tractors, trailers, or appliances shall be, stored or allowed to remain in the open upon public or private property within the Town for a period exceeding five (5) days if upon public property, or for a period exceeding thirty (30) days if upon private property. Any business engaged in automotive sales or repair may retain such vehicles in the open, on private property, for a period not to exceed six months, after which such vehicles must be enclosed by a screening or live planting. The adequacy of such screening or planting shall be subject to the approval of the Town Board.

(1) The phrase "disassembled," as used in this section is defined as follows: motor vehicles in such a condition as to be incapable of propulsion or being operated upon public streets or highways.

(2) The term "unlicensed" as referring to motor vehicles, truck bodies, tractors, or trailers as used in this Ordinance shall be defined as motor-vehicles, truck bodies, tractors, or trailers which do not bear lawful and current license plates.

(3) The term "motor vehicle" is defined in Section 340.01(35) of the Wisconsin Statutes.

(4) The term "appliance" as used in this ordinance shall mean any household or office device, instrument, utensil, apparatus, or machine that utilizes power, including, but not limited to, any stove, clothes washer or dryer, refrigerator, dish washer, freezer, water heater, water pump, furnace, television set, home entertainment device, computer or peripheral device, or other home or office electronic device.

(B) **ABANDONED VEHICLES, ETC.** No person shall leave unattended any motor vehicle, trailer, semi-trailer or mobile home on any public street, highway, or public or private property, for such time and under such circumstances as to cause the vehicle to reasonably appear to have been abandoned. When any such vehicle has been left unattended on any street or highway or on any public or private property within the Town of Black Brook without the permission of the owner for a period of more than seventy-two (72) hours, the vehicle is deemed abandoned and constitutes a public nuisance and may be removed in accordance with Section 342.40 of the Wisconsin Statutes.

SECTION 4. TREES AND SHRUBS

It shall be the policy of the Town of Black Brook to regulate and control the planting, transplanting, removal, maintenance, and protection of public and private

Trees & shrubs in the Town in order to eliminate and guard against dangerous conditions which may result in injury to persons using the streets, highways, alleys, sidewalks or property of the Town; to promote the beauty and general welfare of the Town; to protect trees and shrubs located in the public areas of the Town from undesirable and unsafe planting, removal, treatment and maintenance practices; and to control the spread of tree disease.

(A) DEFINITIONS.

(1) Bush or shrub: a low-spreading woody plant with several permanent stems.

(2) Tree: a woody perennial plant with one main stem or trunk having a diameter of at least two inches, one foot above the ground, and which is capable of attaining a height in excess of ten feet above the ground.

(3) Public trees and shrubs: all trees or shrubs planted in or on any park or other property owned or controlled by the Town or on any street, highway, alley, sidewalk within the public right of way, including terrace trees and shrubs, but excluding school sites.

(B) No person shall plant any bush, shrub or tree in any public easement, street, road, alley, highway, or terrace.

(C) **TRIMMING.** The owner or occupant of any private property shall keep all trees standing on such property so trimmed that no bough or branch thereof shall hang lower than eight (8) feet above the surface of a public sidewalk or fourteen (14) feet above the surface of the street, highway, or alley traveled by vehicles. Shrubs shall be trimmed so that they do not overhang any street, alley, highway, or sidewalk. The owner or occupant of any private property shall remove or cause to be removed any dead tree or dead or broken bough or branch on a tree standing on such private property and overhanging any public street, road, alley, sidewalk, or highway.

(D) DAMAGE TO TREES AND SHRUBS ON PUBLIC PROPERTY.

No person shall maliciously injure any trees growing on any public street, road, alley, or highway or impede the free passage of water or air to such trees. Similar provisions apply to trees and shrubs located in public parks and other public property.

(1) No person shall remove or cause to be removed any tree or shrub from any public property.

(2) The owner or occupant of any private property abutting on any public property may himself maintain and protect any tree standing on such public property at his or her own risk and where no objection has been voiced by any Town Board Supervisor or Chairperson, provided that the owner or occupant complies with the provisions of this Ordinance in any such maintenance performed.

SECTION 5. PERMITS/PERMIT REVOCATION.

(A) **PERMITS.** Upon proper and timely application by an owner or occupant of the premises in the town to the town clerk for a permit, and after a public hearing held by the

town board, the town board may permit on public or private lands in the town, with or without conditions and restrictions, any of the following:

- (1) The storage in the open on private premises of vehicles, structures, machinery, appliances, or equipment in the town that are subject to Sections II(B) and (C).
- (2) The maintenance of buildings, structures, or dwellings in the town that are subject to Section II(C).
- (3) The storage, disposal, treatment, or discharge of items, waste, and materials in the town that are subject to Section II(B).
- (4) A permit under this subsection (A) may be issued by the town board regardless of the ownership or possession rights to the vehicles, implements, machinery, structures, equipment, appliances, buildings, structures, dwellings, items, waste, or materials to be stored, maintained, disposed, treated, or discharged.
- (5) The applicant shall be notified of the public hearing required under paragraph 1 at least 20 days before the public hearing by the mailing by U.S. mail of a First Class notice letter to the last known address of the applicant noted on the application.
- (6) The permit shall be for a specific location, may be established for a term of months or years, and may be reissued upon application by the permit holder if the permit holder is in full compliance with this ordinance and with the permit conditions and restrictions as issued.
- (7) The conditions and restrictions, if any, in the permit established by the town board for any permitted storage, maintenance, disposal, treatment, or discharge shall be reasonable restrictions and conditions to protect the public health, safety, and welfare of persons within the town and to limit or negate potential public nuisances caused by the permitted storage, maintenance, disposal, treatment, or discharge. The conditions and restrictions shall be stated in writing and attached to the written permit upon issuance by the town board.
- (8) The owner or occupant of the permitted premises is responsible for compliance with the conditions and restrictions in the permit issued regardless of whether the owner or occupant of the premises has any legal or equitable interest in the vehicles, structures, machinery, appliances, or equipment subject to the permit.

(B) PERMIT REVOCATION.

- (1) Whenever a complaint is made to the town board, town clerk, town chair, or any appropriate town committee or agent that a violation of a permit issued under this ordinance exists within the town, the town chair, town committee, or other agents of the town board shall promptly inspect or cause to be inspected the premises complained of and shall make a written report of its findings to the town board, which report shall thereafter be filed with the town clerk and kept of record in the office of the town clerk. Whenever practicable, the town chair, town committee, or other agents of the town board shall cause photographs to be made of the premises for inclusion in the written report to the town board.
- (2) If the person subject to complaint holds a current permit under this ordinance, or any Town Building Permit or Junked Vehicle Permit issued under s. 175.25, Wis. stats., and the town's village powers under s. 60.22, Wis. stats., the town chair, the town committee or other agents of the town board may immediately request the town board to hold a public hearing to consider suspension or revocation of the permit for refusal to comply

with the permit conditions and this ordinance. The town board shall hold a public hearing prior to taking any action to revoke or suspend a permit. The permit holder shall be notified of the public hearing at least 20 days before the public hearing by the mailing by U.S. mail of a First Class notice letter to the last known address of the permit holder noted on the permit or permit application.

(3) The town board may, in the alternative to revocation, suspend any issued permit for a period up to 6 months. Any revocation shall be for a period in excess of 6 months and no reapplication can be received or acted upon by the town board for the premises or for the owner or occupant of the premises for any activity, use, or item prohibited by or requiring a permit under this ordinance during the revocation period.

(4) For any decision regarding the revocation or suspension of any permit, the town board shall determine and state the reason or reasons for any revocation, nonrevocation, or suspension of the permit based on the lack of compliance with the permit conditions and this ordinance by the permit holder or by any employees or agents of the permit holder. The reason or reasons for the decision shall be stated in writing and sent to the permit holder within 10 days after the decision by the town board by mailing by U.S. mail of a First Class letter to the last known address of the permit holder noted on the permit or permit application.

SECTION 6. ABATEMENT OF PUBLIC NUISANCES

(A) INSPECTION OF PREMISES. Whenever complaint is made to the Town Chairperson or to a Town Enforcement Officer that a public nuisance exists within the Town of Black Brook, the enforcement officer shall promptly and forthwith inspect or cause to be inspected the premises complained of and shall make a written report of his findings to the Town Chairperson. Whenever practicable, the Town Enforcement Officer shall cause photographs to be made of the premises and shall file the same in the office of the Town Clerk.

(B) SUMMARY ABATEMENT.

(1) Notice to Owner. If the Enforcement Officer shall determine that a public nuisance exists within the Town and that there is great and immediate danger to the public health, safety, peace, . morals or decency, the Town Chairperson may direct the enforcement officer to serve a notice upon a person causing, permitting, or maintaining such nuisance, whether an owner or occupant of the premises where such nuisance is caused, permitted, or maintained. If immediate personal service cannot be made, a copy of such notice shall be posted on the premises in a location likely to attract the attention of the owner or occupant thereof, as well as direct mail notice to the last known owner of said property. Such notice shall direct the person causing, permitting, or maintaining such nuisance, or the owner or occupant to the premises to abate and remove such nuisance within 24 hours and shall state that unless such nuisance is so abated, the Town of Black Brook may cause the same to be abated and will charge the cost thereof to the owner, occupant, or person causing, permitting or maintaining the nuisance.

(2) Abatement by Town. If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the enforcement officer in the case of health nuisances and other cases shall cause the abatement or removal of such public nuisance.

(C) NON-SUMMARY ABATEMENT.

(1) Order to Abate. If the enforcement officer shall determine that a public nuisance exists on private premises but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals or decency, he shall file a written report of his findings with the Town Chairperson. The Town Chairperson shall then issue a written order to the owner or occupant of the premises or to the person causing, permitting or maintaining such nuisance to abate the nuisance to the Town's satisfaction within a reasonable time period to be specified in the written order.

(2) Abatement by Court Action. If the enforcement officer shall determine that a public nuisance exists on private premises but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals or decency, and the owner or occupant of the premises has failed to timely comply with any order issued pursuant to Paragraph "(1)" of this Paragraph "(C)", he shall file a written report of his findings with the Town Chairperson who may cause an action to abate such nuisance to be commenced in the name of the Town of Black Brook in the Circuit Court of Polk County in accordance with the provisions of Chapter 823 of the Wisconsin Statutes. In the alternative, the Chairperson may direct the enforcement officer to issue one or more citations for each day of violation for a said time period and to report back whether compliance has occurred.

(3) Other Methods not Excluded. Nothing in this ordinance shall be construed as prohibiting the abatement of public nuisances by the Town of Black Brook, or its officials in accordance with the laws of the State of Wisconsin.

SECTION 7. COSTS OF ABATEMENT.

In addition to any other penalty imposed by this ordinance for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abatement of any public nuisance by the Town of Black Brook shall be collected as a debt from the owner, occupant or person causing, permitting, or maintaining the nuisance. If notice to abate the nuisance has been given to the owner of the premises on which the nuisance is present, and such nuisance remains unabated, any costs incurred by the Town in abating the nuisance which remain unpaid may be placed on the tax roll for the real estate as a special charge pursuant to Sec. 66.0627 of the Wisconsin Statutes.

SECTION 8. ENFORCEMENT PROVISIONS

(1) First Offense/Penalty. Any person who shall violate this subsection, shall, upon conviction thereof, forfeit not less than twenty-five dollars (\$25.00) and no more than Two Hundred Dollars (\$200.00) together with the cost of prosecution.

(2) Second Offense/Penalty. Any person guilty of violating this subsection or any part of this subsection who shall previously have been convicted of violation of the same ordinance or subsection shall upon conviction thereof forfeit not less than \$100.00 nor more than \$400.00 for each such offense, together with the costs of prosecution.

(3) Upon conviction, each day of violation of this ordinance shall constitute a separate offense.

(4) Any person convicted of violating this ordinance shall have their record expunged after a period of two years if no further convictions have occurred during that period. New offenses after a period of two years from the last conviction will be deemed as a first offense.

(5) This ordinance may be enforced by the Town of Black Brook Enforcement Officer, the Town Board of Black Brook, and the Polk County Sheriffs Department.

SECTION II. SEVERABILITY

If any provision of this Ordinance or any application of this Ordinance to any person or circumstance is found to be invalid or unconstitutional, such a finding shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION III. EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication or posting as provided by law.

Adopted this 15 day of July, 2010.

TOWN OF BLACK BROOK

Charlie Barney, Chairman
Charlie Barney, Town Chairman

Sally Pickard, Clerk
Sally Pickard, Town Clerk

Voted for: 3
Voted against: 0
Abstained:
Effective date: