

7.01 PUBLIC NUISANCES PROHIBITED

No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the City limits of the City of Pewaukee.

7.02(a) PUBLIC NUISANCE DEFINED

- (1) PUBLIC NUISANCE. A public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as to:
Substantially annoy, injure or endanger the comfort, health, repose or safety of the public; In any way render the public insecure in life or in the use of property; Greatly offend the public morals or decency standards of the City of Pewaukee; Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property.

7.02(b) PUBLIC NUISANCES AFFECTING HEALTH

The following acts, omissions, places, conditions and things are hereby specifically declared to be public health nuisances, but such enumeration shall not be construed to exclude other health nuisances coming within the definition of Section 7.02:

- (1) ADULTERATED FOOD. All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.
- (2) UNBURIED CARCASSES. Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death.
- (3) BREEDING PLACES FOR VERMIN, ETC. Accumulations 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) STAGNANT WATER. All stagnant water in which mosquitoes, flies or other insects can multiply.
- (5) PRIVY VAULTS AND GARBAGE CANS. Privy vaults and garbage cans which are not fly-tight.
- (6) WATER POLLUTION. The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage, creamery or industrial wastes or other substances.
- (7) NOXIOUS ODORS, ETC. Any use of property, substances or things within the City of Pewaukee emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, gases, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the City.
- (8) STREET POLLUTION. Any use of property which shall cause any nauseous or unwholesome liquid or substances to flow into or upon any street, gutter, alley, sidewalk or public place within the City.
- (9) AIR POLLUTION. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the City limits in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property in the City.
- (10) DRUG PARAPHERNALIA.
 - (a) Definition. In this section "drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting,

ingesting, inhaling or otherwise introducing into the human body a controlled substance, as defined in Chapter 961, Wisconsin Statutes, in violation of this section. It includes, but is not limited to:

1. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
2. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
3. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance.
4. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.
5. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances.
6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances.
7. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana.
8. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances.
9. Capsules, balloons, envelopes or other containers used, intended for use or designed for use in packaging small quantities of controlled substances.
10. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.
11. Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body.
12. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, including but not limited to:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.
 - b. Water pipes.
 - c. Carburetion tubes and devices.
 - d. Smoking and Carburetion masks.
 - e. Objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand.
 - f. Miniature cocaine spoons and cocaine vials.
 - g. Chamber pipes.
 - h. Carburetor pipes.
 - i. Electric pipes.
 - j. Air-driven pipes.
 - k. Chillums.
 - l. Bongs.
 - m. Ice pipes or chillers.

(b)Determination of Drug Paraphernalia. In determining whether an object is drug paraphernalia,

the following shall be considered:

- Statements by an owner or by anyone in control of the object concerning its use.
- Prior convictions, if any, of an owner or of anyone in control of the object, under any city, state or federal law relating to any controlled substance.
- The proximity of the object in time and space to a direct violation of this section.
- The proximity of the object to controlled substances.
- The existence of any residue of controlled substances on the object.
- Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom the person knows, or should reasonably know, intend to use the object to facilitate a violation of this section. The innocence of an owner or of anyone in control of the object as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia.
- Oral or written instructions provided with the object concerning its use.
- Descriptive materials accompanying the object which explain or depict its use.
- National and local advertising concerning its use.
- The manner in which the object is displayed for sale.
- Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise.
- The existence and scope of legitimate uses for the object in the community.
- Expert testimony concerning its use.

(c) Prohibited Activities:

(1) Possession of Drug Paraphernalia. No person may use, or possess with 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 this section.

(2) Manufacture, Sale or Delivery of Drug Paraphernalia. No person may sell, deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing that it will be used 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 this section.

(3) Delivery of Drug Paraphernalia to a Minor. Delivery to any person under 18 years of age is guilty of a special offense.

(4) Advertisement of Drug Paraphernalia. No person may place in any newspaper, magazine, handbill or other publication, or upon an: outdoor billboard or sign, any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(5) Exemption. This subsection does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with Chapter 961,

Wisconsin Statutes. This section does not prohibit the possession, manufacture or use of hypodermics, in accordance with Chapter 961, Wisconsin Statutes.

(d) Penalties.

(1) Any drug paraphernalia used in violation of this section shall be seized and forfeited in accordance with Section 961.55, Wis. Stats.

(2) Any person who violates Section 7.02 B (i), Subsections 10 (c) (1, 2 or 4) shall, upon conviction, be subject to a forfeiture of not more than \$500, together with the costs of prosecution, and upon default of payment be imprisoned in the county jail or house of correction until the costs are paid, but not to exceed 20 days.

(3) Any person who violates Section 7.02 B (i), Subsection 10 (d) shall upon conviction, be subject to a forfeiture of \$1,000, together with the costs of prosecution, and upon default of payment be imprisoned in the county jail or house of correction until the costs are paid, but not to exceed 40 days

(11) ADULT ORIENTED ESTABLISHMENTS.

a. Definitions. For the purpose of this ordinance, the following words and phrase shall mean:

"Adult-oriented establishment", shall include, but is not limited to, "adult bookstores," "adult motion picture theaters," "adult mini-motion picture establishments," or "adult cabaret," and further means any premises to which public patrons or members are invited or admitted and which are so physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common area of the premises for the purposes of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, whether or not such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect.

"Adult bookstore" means an establishment having as its stock in trade, for sale, rent, lease, inspection or viewing books, films, video cassettes, magazines or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specific sexual activities" or "specified anatomical areas" as defined below, and in conjunction therewith have facilities for the presentation of adult entertainment, as defined below, including adult oriented films, movies or live performances, for observation by patrons therein.

"Adult cabaret" means a cabaret which features topless dancers, strippers, male or female impersonators, or similar entertainers.

"Adult entertainment" means any exhibition of any motion pictures, live performance, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on, any actual or simulated "specified sexual activities," or "specified anatomical areas," as defined below, or the removal of articles of clothing or appearing partially or totally nude.

"Adult mini-motion picture theater" means an enclosed building with a capacity of less than fifty (50) persons used for presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing or relating to "specified sexual activities," or "specified anatomical areas," as defined below, for observation by patrons therein.

"Adult motion picture theater" means an enclosed building with a capacity of fifty (50) or more persons used for presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing or relating to "specified sexual activities," or "specified anatomical areas," as defined below, for observation by patrons therein.

“Common Council” means the City Common Council for the City of Pewaukee, Wisconsin.

“Operators” means any person, partnership, or corporation operating, conducting, maintaining or owning any adult-oriented establishment.

“Specified sexual activities” means simulated or actual: Showing of human genitals in a-state of sexual stimulation or arousal; Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio or cunnilingus; Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

“Specified anatomical areas” means: Less than completely and opaquely covered human genitals, pubic region, buttocks, and female breasts below the point immediately above the top of the areola; Human male genitals in a discernible turgid state, even if opaquely covered.

b. License. Except as provided in Section 7.02 B (ii), Subsection 11 (b)(4) below, from and after the effective date of this ordinance, no adult-oriented establishment shall be operated or maintained in the City of Pewaukee without first obtaining a license to operate issued by the City of Pewaukee.

A license may be issued only for (1) adult-oriented establishment located at a fixed and certain place. Any person, partnership, or corporation which desires to operate more than one adult-oriented establishment must have a license for each.

No license or interest in a license may be transferred to any person, partnership or corporation.

All adult-oriented establishments existing at the time of the passage of this ordinance must submit an application for a license within ninety (90) days of the passage of this ordinance. If an application is not received within said ninety (90) day period, then such existing adult-oriented establishment shall cease operations.

c. Application for License. Any person, partnership or corporation desiring to secure a license shall make application to the City Clerk. The application shall be filed in triplicate with and dated by the City Clerk. A copy of the application shall be distributed promptly by the City Clerk to law enforcement and to the applicant. (Rep. & Recr. 09-21)

The application for a license shall be upon a form provided by the City Clerk. An applicant for a license shall furnish the following information under oath:

- Name and address.
- Written proof that the individual is at least eighteen (18) years of age.
- The address of the adult-oriented establishment to be operated by the applicant.
- If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agents and the name and address of all shareholders owning more than five percent (5%) of the stock in said corporation and all officers and directors of the corporation.

Within twenty one (21) days of receiving an application for a license the City Clerk shall notify the applicant whether the application is granted or denied.

Whenever an application is denied, the City Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held within ten (10) days thereafter before the Board, as hereinafter provided.

Failure or refusal of the applicant to give any information relevant to the application or his or

her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with regard to any information required by this ordinance shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the City Clerk.

d. Standards for Issuance of License.

(1) To receive a license to operate an adult-oriented establishment, an applicant must meet the following standards:

If the applicant is an individual:

- The applicant shall be at least eighteen (18) years of age.
- The applicant shall not have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application.

If the applicant is a corporation:

- All officers, directors and stockholders required to be named under Section 7.02 B (ii), Subsection 11 (c)(2) shall be at least eighteen (18) years of age.
- No officer, director, or stockholder required to be named under Section 7.02 B (ii), Subsection 11 (c)(2) shall have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application.
- If the applicant is a partnership, joint venture, or any other type of organization where two (2) or more persons have a financial interest:
 - All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age.
 - No person having a financial interest in the partnership, joint venture or other type of organization shall have been found to have violated any provisions of this ordinance within five (5) years immediately preceding the date of the application.

e. Fees. A license fee as shall be established from time to time by resolution of the Common Council shall be submitted with the application for a license. If the application is denied, one-half (1/2) of the fee shall be returned. (Rep. & Rec. 06-17)

f. Display of License or Permit. The license shall be displayed in a conspicuous public place in the adult-oriented establishment.

g. Renewal of License or Permit. (Rep. & Rec. 06-17) Every license issued pursuant to this Ordinance will terminate at the expiration of one (1) year from date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the City Clerk. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the City Clerk. A copy of the application for renewal shall be distributed promptly by the City Clerk to the operator. The application for renewal shall be upon a form provided by the City Clerk and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.

A license renewal fee as shall be established from time to time by resolution of the Common Council shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty as shall be established from time to time by resolution of the Common Council shall be assessed against any applicant who files for a renewal less than sixty (60) days before the license expires. If the application is denied, one-half (1/2) of the total fees collected shall be returned.

If law enforcement officers are aware of any information bearing on the operator's qualifications,

that information shall be filed in writing with the City Clerk. (Rep. & Recr. 09-21)

h. Revocation of License.

The Board shall revoke a license or permit for any of the following reasons:

Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.

The operator or any employee of the operator, violates any provision of this Ordinance or any rule or regulation adopted by the Board pursuant to this Ordinance; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of thirty (30) days of the Board shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

The operator becomes ineligible to obtain a license or permit.

Any cost or fee required to be paid by this Ordinance is not paid.

Any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult-oriented establishment.

The Board, before revoking or suspending any license or permit, shall give the operator at least (10) days written notice of the charges against him, and the opportunity for a public hearing before the Board, as hereinafter provided.

The transfer of a license or any interest in a license shall automatically and immediately revoke the license.

Any operator whose license is revoked shall not be eligible to receive a license for one (1) year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for six (6) months from the date of revocation of the license.

i. Physical Layout of Adult-Oriented Establishment. Any adult-oriented establishment having available for customers, patrons or members, any booth, room or cubicle for the private viewing of any adult entertainment must comply with the following requirements:

Access. Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the adult-oriented establishment and shall be unobstructed by any door, lock or other control-type devices.

Construction. Every booth, room or cubicle shall meet the following construction requirements:

Each booth, room or cubicle shall be separated from adjacent booths, rooms or cubicles and any non-public areas by a wall.

Have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the same.

All walls shall be solid and without any openings, extended from the floor to a height of not less than six (6) feet and be light-colored, non-absorbent, smooth textured and easily cleanable.

The floor must be light colored, non-absorbent, smooth textured and easily cleanable.

The lighting level of each booth, room or cubicle, when not in use shall be a minimum of ten

(10) foot candles at all times, as measured from the floor.

Occupants. Only one individual shall occupy a booth, room or cubicle at any time. No occupancy of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

j. Responsibilities of the Operator. Every act or omission by an employee constituting a violation of the provisions of this Ordinance shall be deemed the act of omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

Any act or omission of any employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.

No employees of an adult-oriented establishment shall allow any minor to loiter around or to frequent an adult-oriented establishment or to allow any minor to view adult entertainment as defined herein.

The operator shall maintain the premises in a clean and sanitary manner at all times.

The operator shall maintain at least ten (10) foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no times shall there be less than one (1) foot candle of illumination in said aisles, as measured from the floor.

The operator shall insure compliance of the establishment and its patrons with the provisions of this Ordinance.

k. Administrative Review Procedure. The Pewaukee Municipal Ordinances and State Law shall govern the administrative procedure and review regarding the granting, denial, renewal, non-renewal, revocation or suspension of a license.

l. Exclusions. All private schools, and public schools, as defined in Chapter 115, Wisconsin Statutes, located within the City of Pewaukee are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum.

m. Penalties and Prosecution. Any person shall violate any provisions of this ordinance or who shall fail to obtain a license or permit as required hereunder shall be subject to penalty as provided in Section 25.04 of the Pewaukee Municipal Code.

(12) CHEMICAL SYNTHETIC CANNABINOID PROHIBITED. (Cr. 10-12)

a. POSSESSION, USE AND SALE ARE ILLEGAL. It shall be illegal for any person to use, possess, purchase, attempt to purchase, sell, publicly display or sale or attempt to sell, give or barter, except as provided herein, any one or more of the following chemicals whether under the common street or trade names, label or descriptions as follows:

1. "Spice", "K2", "Genie", "Yucatan Fire", "fake" or "new marijuana";

2. Salviadivinatorum or salvinorum A; all parts of the plant presently classified botanically as salvia divinatorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts derivative, mixture or preparation of such plant, its seeds or extracts;

3. (6aR)-9 (hydroxymethyl)-6, 6dimethyl-3 (2 methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo(c)chromen-1-ol some trade or other names: HU-210;
4. 1-Pentyl-3-(1-naphthoyl) indole-some trade or other names: JWH-018/spice;
5. 1-Butyl-3-(1-naphthoyl) indole-some trade or other names: JWH-073;
6. -1-(3(trifluoromethylphenyl) piperazine-some trade or other names: TFMPP;
7. 2-(3-hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol - some trade or other names: CP 47, 497;
8. 1 (2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl) indole - some trade or other names: JWH-200;
9. 1-hexyl-3-(1-naphthoyl)indole - some trade or other names: JWH-019;
10. 1-pentyl-3-(2-methoxyphenylacetyl)indole - some trade or other names: JWH-250;
11. 1-pentyl-3-(4-chloro-1-naphthoyl)indole - some trade or other names: JWH-398;
12. (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone - or some trade or other names: JWH-015;
13. Dexanabinol,(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - or some trade or other names: BU-211.

b. **MEDICAL OR DENTAL USE ALLOWED.** The use, possession, purchase or attempt to purchase any of the items in Section (a) is not prohibited when directed or prescribed by a licensed physician, dentist or other medical health professional authorized to direct or prescribe such use provided that the use is permitted by state or federal laws.

7.02(C) PUBLIC NUISANCE OFFENDING MORALS AND DECENCY

The following acts, omissions, places, conditions and things are hereby specifically declared to be public nuisances offending public morals and decency, but such enumeration shall not be construed to exclude other nuisances offending public morals. and decency within the definition of Section 7.02:

- (1) **DISORDERLY HOUSES.** All disorderly houses, bawdy houses, houses of ill-fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual intercourse or gambling, except to the extent authorized by State Law.
- (2) **GAMBLING DEVICES.** All gambling devices and slot machines, except to the extent authorized by State Law.
- (3) **UNLICENSED SALE OF LIQUOR AND BEER.** All places where intoxication liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided for by the Municipal Code of the City of Pewaukee.
- (4) **CONTINUOUS VIOLATION OF CITY CODES.** Any place or premises within the City where the City Code or state laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.
- (5) **ILLEGAL DRINKING.** Any place or premises resorted to for the purpose of drinking intoxication liquor or fermented malt beverages in violation of the laws of the State of Wisconsin or Code of the City.

7.02(D) PUBLIC NUISANCES AFFECTING PEACE AND SAFETY

The following acts, omissions, places, conditions and things are hereby declared to be public nuisances

affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the definitions of Section 7.02:

- (1) **SIGNS, BILLBOARDS, ETC.** All signs and billboards, awnings and other similar 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) **ILLEGAL BUILDINGS.** All buildings erected, repaired or altered in violation of the provisions of the Code of the City of Pewaukee relating to materials and manner construction of buildings and structures within the City.
- (3) **UNAUTHORIZED TRAFFIC SIGNS.** All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing which purport to be or may be mistaken as an official traffic control device, railroad sign or signal or which because of its color, location, brilliance, or manner of operation interferes with the effectiveness of any such device, sign or signal.
- (4) **OBSTRUCTION OF INTERSECTION.** 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.
- (5) **TREE LIMBS.** All limbs of trees which project over a public sidewalk less than eight (8) feet above the surface thereof or less than ten (10) feet above the surface of a public street.
- (6) **DANGEROUS TREES.** All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.
- (7) **FIREWORKS.** All use or display of fireworks except as provided by the laws of the State of Wisconsin and Code of the City of Pewaukee.
- (8) **DILAPIDATED BUILDINGS.** All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.
- (9) **WIRES OVER STREETS.** All wires over streets, alleys, or public grounds which are strung less than fifteen (15) feet above the surface thereof.
- (10) **NOISY ANIMALS OR FOWL.** The keeping or harboring of any animal or fowl which by frequent or habitual howling, yelping, barking, crowing or making of other noises shall greatly annoy or disturb two (2) or more persons within the City.
- (11) **UNLAWFUL ASSEMBLY.** Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.
- (12) **SNOW AND ICE REMOVAL.** All ice not removed from public sidewalks and all snow not removed from public streets within twelve (12) hours after it has ceased to fall thereon.
- (13) **ANIMALS.** Keeping, feeding, harboring, securing or failing to secure any domestic or wild animal in any manner which promotes or causes a nuisance as defined in sec.7.02(A).

7.03 ABANDONED OR JUNKED VEHICLES AND VEHICLE PARTS.

- (1) **ABANDONED VEHICLES OR VEHICLE PARTS.** No person shall leave unattended any motor vehicle, trailer, semi trailer or mobile home or parts thereof on any public street, road or highway right-of-way, nor may such vehicles or parts be left unattended on private or public property, for such time and under such circumstances as to cause the vehicle or vehicle parts to reasonably appear to have been abandoned. Except as otherwise provided in this Section whenever any vehicle or vehicle parts has been left unattended without the permission of the property owner for more than forty-eight (48) hours, the vehicle is deemed abandoned and constitutes a public nuisance. A motor vehicle shall

not be considered an abandoned vehicle when it is out of public view or when it is currently registered or designated as not abandoned by a duly authorized City official.

(2) **JUNKED MOTOR VEHICLE AND MOTOR VEHICLE PARTS.** (Amend. 04-11) Motor vehicles completely or partially disassembled, dismantled, junked, wrecked, inoperable, or not currently registered and license as well as motor vehicle parts of any kind, type or nature shall not be stored or allowed to remain outside of an authorized storage building located upon private property within the City of Pewaukee for longer than ten (10) days unless such vehicle or parts are accessory to an authorized automotive sales, repair, towing, or salvage business or institution enterprise located in a properly zoned area. Within this Code section “inoperable” shall mean a person is unable to physically manipulate or activate any of the vehicle controls necessary to put it in motion. In addition:

(a) Such vehicles or vehicle parts, when located on public property, may be towed or removed from the scene after forty-eight (48) hours and impounded as set forth elsewhere in this section.

(b) Such vehicles or vehicle parts may not be located on private property outside of a permanent building enclosure except as set forth in Section 7.03, Subsection (2)(c).

(c) Such vehicles or vehicle parts accessory to an automotive sales, repair, or towing business may not be located or stored by the property or business operator outside of an authorized storage building for more than 90 calendar days in a twelve (12) month period.

(d) Such vehicles or vehicle parts stored as junk in an authorized junk or salvage yard must be screened with a visibly impervious screen of at least six (6) feet in height as authorized and permitted by the Building Inspector/Zoning Administrator.

(3) **SALE OR JUNKING OF ABANDONED OR JUNKED VEHICLES OR VEHICLE PARTS.** Any vehicle or vehicle part deemed to be in violation of Section 7.03, Subsection (1) or (2) herein, shall be impounded until lawfully claimed or disposed of as set forth under Section 7.03, Subsection (4).

(4) **STORAGE AND SALE.**

(a) **Storage and Sale.** Any vehicle which is deemed abandoned shall be retained in a convenient place of storage for a minimum of ten (10) days after certified mail notice has been sent to the owner and lien holder of record to permit reclamation of the vehicle upon payment of accrued charges. Such notice shall set forth the year, make, model and serial number of the abandoned motor vehicle, the place where the vehicle is being held and shall inform the owner and any lien holders of their rights to reclaim the vehicle. The notice shall state that the failure of the owner or lien holders to exercise their rights to reclaim the vehicle under this Section shall be deemed a waiver of all right, title and interest in the vehicle and a consent to the sale of the vehicle. Further said notice shall state that a Due Process Hearing as established by the City may be requested within five (5) days of receipt of the notice in writing to the City Clerk. Each stored vehicle not reclaimed by its owner within the time listed above may be sold. The City may dispose of the vehicle by sealed bid or auction sale. At such public sale, the highest bid for any such motor vehicle shall be accepted unless the same is deemed inadequate by the City, in which event all bids may be rejected. If all bids are rejected or no bid is received, the City may either re-advertise the sale, adjourn the sale to a definite date, sell the motor vehicle at a private sale or junk the vehicle. Any interested person may offer bids on each abandoned vehicle to be sold.

(b) **Procedure for bidding.** Public notice of the sale, whether it be by auction or sealed bid, shall be posted in accordance with local procedures. In addition, a copy of the notice shall be mailed to the last owner of record and lien holder of record.

(c) **Procedure after sale.** Upon the sale of the abandoned vehicle, the City shall supply the purchaser with a completed Form MVD 2419-77 which will enable said purchaser to obtain a registration certificate of title for the vehicle. Purchaser shall have ten (10) days to remove the vehicle from the storage area, but shall pay a reasonable storage fee if established by the City for each day the vehicle remains in storage after the second business day subsequent to the sale date. Ten (10) days after the sale, if the vehicle has not as yet been claimed by the purchaser,

the purchaser shall forfeit all interest in the vehicle and the vehicle shall be deemed to again be abandoned and may be sold again. Any list of vehicles to be sold by the City shall be made available to any interested person or organization which makes a written request for such list. The City Clerk may charge a fee for the preparation of said list.

(d) Notice to Motor Vehicle Department. Within five (5) days after the sale or disposal of a motor vehicle as provided in this Ordinance, the City Clerk shall advise the Motor Vehicle Department of the sale or disposition on the appropriate form supplied by the Motor Vehicle Department.

7.04 DUTCH ELM DISEASE.

(1) DEFINITION - NUISANCE. All species and varieties of elm trees (trees of genus *Ulmus*) infected with the fungus known as the Dutch elm disease (*ceratostomella Ulmi*) as determined by laboratory analysis by the Section of Applied Botany and Plant Pathology, Natural History Survey, or by laboratories approved by said agency, are hereby declared to be a public nuisance.

All species and varieties of elm trees that are dead or substantially dead and all dead elm wood to which the bark is still attached, which, because of their condition, may serve as a breeding place for the European elm bark beetle (*Scolytus multistriatus*), and the native elm bark beetle (*Hylurgopinus rufipes*), or any other carrier of said disease, are hereby declared to be public nuisances.

(2) ENFORCING OFFICER. The Forester shall perform the duties set forth in this Section and shall enforce the provisions of this Section. He/she may have such assistance as the City shall from time to time provide for.

(3) ABATEMENT OF NUISANCE BY OWNER OF PROPERTY. It shall be unlawful for any owner of any lot or parcel of land in the City to permit or maintain on any such lot or parcel of land any dead elm wood or elm tree which is a public nuisance as defined herein, and it shall be the duty of the owner of such to promptly remove and burn any such elm tree or dead elm wood under the supervision and direction of the Forester.

(4) INSPECTIONS. The Forester is authorized and empowered to enter upon any lot or parcel of land in the City at any reasonable hour for the purpose of inspecting any elm trees or dead elm wood situated thereon and he may remove such specimens from any such trees as are required for the purposes of the laboratory analysis referred to in this Section, or to determine whether such tree because it is dead, or substantially dead, may serve as a breeding place for any carrier of Dutch elm disease. It shall be unlawful for any person firm or corporation to take any action to prevent the Forester from entering on any lot or parcel of land in the City for the purpose of such inspection or to interfere with the Forester in the performance of any of his duties provided for under the provisions of this Section.

(5) NOTICE TO OWNER. If, on laboratory analysis of specimens removed from any elm tree by the Forester, it is determined that such tree is a public nuisance as provided herein, or if the Forester determines that any dead, or substantially dead elm trees, or dead elm wood, is a public nuisance as provided herein, the Forester shall serve or cause to be served upon the owner of record of the lot or parcel of land on which such tree or dead elm wood is located, a written notice requiring such owner to comply with the provisions of this Section. Said notice shall state that a Due Process Hearing as established by Chapter 22 of the City Code, may be requested within five (5) days of the receipt of the notice in writing to the Forester. If any person, firm or corporation upon whom such notice is served, fails, neglects or refuses to remove and destroy by burning, such elm tree or dead elm wood within ten (10) days after service of such notice, the Forester may proceed to remove and burn such tree or dead elm wood and assess the cost thereof against the owner of such lot or parcel of land and the amount of such cost shall be paid by the owner to the City.

Service of notice provided for in this Section shall be by personal service if the owner of the lot or parcel of land on which an infected elm tree is located is a resident of the City. If such owner cannot be found in the City of Pewaukee or is a nonresident of said city, written notice shall be served by certified mail.

(6) **PAYMENT OF COSTS.** If the City removes from any lot or parcel of land in the City, any infected, dead or substantially dead elm tree or dead elm wood, which is a public nuisance as provided by this Section, the assessment of the cost of the work done by the City against the owner of the lot or parcel of land involved shall be in addition to the penalties imposed herein for any violation or noncompliance with any provision of this Section.

(7) **ABATEMENT OF NUISANCE BY CITY.** Any elm tree or dead elm wood on property owned by the City which is a public nuisance as defined in this Ordinance shall be promptly removed and burned under the supervision of the Forester at the expense of the City.

7.05 NOXIOUS WEEDS. (Repealed 05-11)

7.07 OFF THE ROAD VEHICLES.

(1) **PROHIBITED OPERATION OF "OFF THE ROAD VEHICLES.** It shall be unlawful for any person to operate within the corporate limits of the City any "off the road" vehicle on any property unless authorized by this Section regardless of the authority by State Law.

(2) **AUTHORIZED OPERATION OF "OFF THE ROAD" VEHICLES.** "Off the road" vehicles may be operated:

(a) On the premises owned by the operator or member of the family of the operator if said operator resides on the premises where said vehicle is being operated. Operation of said vehicle shall be between the hours of 9:00 A.M. and 6:00 P.M. and be such that the noise from said vehicle does not cause a nuisance and annoyance to other persons residing near said operation.

(b) In those areas designated by the City Common Council as "approved vehicle parks" pursuant to the terms and conditions set by the City Common Council.

(c) On premises owned by someone other than the operator if the operator possesses a proper permit therefore from the City Common Council.

1. All applications for permits hereunder shall be made in writing upon the written form provided by the City Common Council and distributed by the City Clerk, and shall be signed by the applicant and filed with the City Clerk. The City Common Council may grant special permission to an applicant to operate a vehicle regulated herein, on property owned by another, only if, in their discretion, they feel said permit will not create a nuisance or prove injurious to the health, safety and welfare of the surrounding properties and neighbors as well as the City as a whole, the City Clerk shall issue a permit hereunder only after first receiving the approval of the City Common Council. All applications shall require the following:

a. Written permission must be received and filed with the City for all adult residents on and landowners of the land on which is being proposed to operate said vehicle.

b. Written permission must be received and filed with the City from all neighboring landowners and all adult residents thereon of all lands within three hundred (300) feet of the property on which the vehicles(s) are proposed to be operated. Said permission must state that those owners and residents have no objection.

c. Proof that the land on which the operation is proposed is at least ten (10) acres in size.

2. All permits granted by the City Common Council under this Section are subject to the following conditions:

a. The name and address of the operator must be on file with the City Clerk and Chief of Police.

b. The owner of the land may revoke his permission to ride in the permitted area at any time upon notice to the operator and City Common Council.

- c. Permitted hours of operation shall be between the hours of 9:00 A.M. and 6:00 P.M. and operation shall be such that the noise from said vehicle does not cause a nuisance and annoyance to other persons residing near the operation.
- d. All permits issued hereunder shall expire on December 31 following the date of issue.
- e. Operator must have the permit in his/her possession during all periods of operation.
- f. Only the named permittee may use the permit.
- g. Permittee shall hold the City harmless for any claims for damages or injuries resulting from the use of this permit

3. The City Common Council reserves the right to revoke any permit granted under this Section in the event the City Common Council receives justified complaints in regard to the operation of the "off the road" vehicle after written notice of the complaints is given to the permittee and said permittee is given an opportunity to be heard in regard to the same.

4. No parent or guardian of any child under the age of 18 years shall authorize, allow, or permit such child to violate any of the provisions of this section.

(3) DEFINITIONS. For the purpose of this Section: "Off the road" vehicles shall be defined as any minibike, trail bike, all-terrain vehicle, go-cart, or other similar self-propelled vehicles (expressly excluding snowmobiles which are regulated by separate Ordinance and Wisconsin Statutes) which are commonly operated off the traveled portion of the public thoroughfare whether currently being used on or off the road and whether registered or non-registered.

"Operator" means a person who drives or is in actual physical control of the vehicle herein regulated.

"Public thoroughfare" shall be defined to include public road, street, alley, highway, freeway, interstate, county trunk highway or public right-of-way.

"Traveled portion" is defined as the paved or otherwise surfaced portion of the roadway and the prepared shoulder, but shall include the grass area within the statutory limits of the highways and contiguous to the traveled portion thereof.

"Approved vehicle parks" are defined as those areas within the limits of the City of Pewaukee which are specifically approved by the City Common Council for operation of off the road vehicles.

(4) STATE LAWS ADOPTED. Except as otherwise specifically provided in this Code, the current and future statutory provisions of Section 23.33, Wis. Stats. describing and defining regulations with respect to all-terrain vehicles are adopted and by reference made a part of this Code as if fully set forth herein. Any act required to be performed or prohibited by any current or future statute incorporated herein by reference is required or prohibited by this Section. Any future additions, amendments, revisions or modifications of the current or future statutes incorporated herein are intended to be made part of this Code in order to secure uniform state-wide regulation of all-terrain vehicles in the City of Pewaukee.

7.08 CIVIL TRESPASS.

(1) CIVIL TRESPASSING PROHIBITED. No person shall go upon the premises owned, occupied, or possessed by another, without an invitation, express or implied, extended by such owner, occupant, or possessor, and solely for his own pleasure, advantage, or purpose.

(2) DEFINITIONS. For the purpose of this Section:

"Trespasser" is one who goes upon premises owned, occupied, or possessed by another without an invitation, express or implied, extended by such owner, occupant, or possessor, and solely for his own pleasure, advantage, or purpose.

An invitation to be on the premises of another may be by express or implied consent. There is an implied consent when the possessor, by his conduct or his words, or both, by implication consents to such other person's being on the premises.

7.09 JUVENILE OPERATION OF MOTOR VEHICLES.

(1) PROHIBITED OPERATION OF MOTOR VEHICLES ON THE PUBLIC THOROUGHFARES BY UNLICENSED JUVENILES. Subject to the applicable provision of the Wisconsin Statutes and the Wisconsin Administrative Code, no unlicensed juvenile under sixteen (16) years of age shall operate any motor vehicle, whether registered or unregistered, on the public thoroughfare.

(2) DEFINITIONS. For the purpose of this Section:

"Motor Vehicle" shall be defined as a vehicle which is self propelled;

"Operate" means driving or in actual physical control of a motor vehicle;

"Public thoroughfare" shall be defined to include any public road, street, alley, highway, freeway, interstate, county trunk highway or public right-of-way and shall include the grass area within the statutory limits of the public thoroughfare and contiguous to the traveled portion thereof.

7.10 PROPERTY MAINTENANCE RESPONSIBILITY AND STANDARDS.

(1) SCOPE. This section shall apply uniformly to the maintenance and use of all premises within the City of Pewaukee and the owners, occupants, and operators thereof.

(2) PROPERTY OWNER AND OCCUPANT RESPONSIBILITIES. It shall be the responsibility of every owner and occupant of property within the City to maintain such property in a visually clean, sanitary, safe and groomed condition in order to be aesthetically pleasing and compatible with the majority of individual properties in the neighborhood with similar uses, more specifically, it is every property owner and occupant's responsibility to:

- Keep any building(s) and building-related equipment located on the property in good, safe repair and maintained in a new or near new condition as relates to exterior appearance.

- Keep and maintain all non-surfaced yard areas in grass or other ground cover in keeping with the other properties in the neighborhood and, in addition, install and maintain trees, shrubs and other landscape materials in a manner to be an attractive setting for the building(s) and the neighborhood, and continually maintain such landscaping in a neat and groomed manner.

- Keep all solid waste receptacles and receptacle areas screened from view of the general public and neighbors, and in containers that will not attract animals or vermin.

- Keep all non-residential driveways and parking areas hard surfaced and dust-free and keep all residential driveways and parking areas dust-free.

- Keep all yards which are visible to the general public and neighbors, free of the storage of vehicles, equipment and materials which are not accessory and compatible with the principal use of the property, except where approved by the Plan Commission.

- Keep and maintain all fences and walls, whether designed to be functional or only decorative, in a safe, new or near new condition and appearance.

- Keep all signs and lighting on the site in good repair in order to be both safe and visually unobtrusive.

- Keep all drainage swales or storm drains and utility and other designated easements unblocked, open and unencumbered, but maintained as a part of the property.

(3) **MINIMUM PROPERTY MAINTENANCE STANDARDS.** All non-paved yard areas shall be graded to alleviate standing water, and shall be maintained in grass, other vegetative ground cover, or trees and shrubs compatible with similar uses within the neighborhood. Such ground cover, trees and shrubs shall be kept maintained and trimmed in compatibility with such other neighborhood uses.

Grass and other general ground cover shall be kept trimmed to a height of no more than eight (8) inches. Noxious weeds, as defined herein, are prohibited and shall be destroyed by the owner or occupant. Grass and other general ground cover greater than 8" in height and noxious weeds are declared public nuisances. (Repealed and Recreated 05-11)

(4) (a) **GENERAL ENFORCEMENT.** The Zoning Administrator is authorized to prepare and distribute procedural rules as deemed necessary to administer the purposes of this ordinance. If any City of Pewaukee property owner makes a complaint concerning the maintenance of a property or properties in the City, the Code Compliance Officer shall review such complaint, visit the property against which such complaint has been made and, if found to be in violation of this or any other City ordinance, shall issue a written notice of such violation(s) to the owner or occupant of the property along with a specified time period within which such violation(s) must be corrected. The Code Compliance Officer may inspect properties for violations during periodic inspections as part of the officer's duties. If the violation(s) have not been corrected on or before the time specified in the notice from the Code Compliance Officer, a citation may be issued. (Repealed and Recreated 05-11)

(b) **CODE COMPLIANCE OFFICER.** The Code Compliance Officer shall be the Weed Commissioner, and shall take the official oath which shall be filed in the City Clerk's office. The Code Compliance Officer shall have the powers and duties as enumerated in §§66.0407 and 66.0517, Wis. Stats., regarding weed commissioners, except that he shall not receive compensation for his services other than his regular salary, as well as other duties as provided by the Common Council. (Repealed and Recreated 05-11)

(c) **NOXIOUS WEED AND GRASS-GENERAL GROUND COVER ENFORCEMENT.** (Repealed and Recreated 05-11)

1. If the Code Compliance Officer finds a violation of subsection (3)(b), the Officer shall issue a notice of violation to the owner or occupant of the property giving the owner or occupant five (5) days from receipt of the notice, in which to correct the violation. The notice shall be in writing, specifying the violation(s) and served personally on the property owner or occupant or sent by certified mail, return receipt requested.
2. If compliance with notice of violation has not been achieved within the five (5) day compliance period, the Code Compliance Officer may issue a municipal citation to the property owner or occupant.
3. Each violation and each day a violation of subsection (3)(b) exists shall constitute a separate offense, subject to forfeiture and other penalties as provided in this Code at sections 7.13 and 25.04.
4. No written notice as provided for in subdivision 1. above, is required for any person who previously received a notice under subdivision 1., to comply with the provisions of subsection (3)(b) within the immediately preceding 12 month period, when a subsequent inspection shows an identical or substantially similar violation of subsection (3)(b). In such instances, the Code compliance Officer may issue a citation immediately for the violation.
5. **DEFINITIONS.**
 - a. "Building-related Equipment" includes, but is not limited to heating and air-conditioning equipment, chimneys and vents, signs, antennae, gutters and downspouts, fences, steps, shutters, lights, garages, sheds, birdhouses,

doghouses, and small storage structures.

b. "Gardening and Recreational Vehicles and Equipment" includes but is not limited to, lawn mowers, snow blowers, tractors, wheelbarrows, ladders, scaffolding, cultivators, roto-tillers, seed and fertilizer spreaders, mechanical lawn rakes, lawn rollers, snowmobiles, ATV's, campers, truck-camper units, boats and recreation trailers.

c. "Noxious weeds" means the following: Canada thistle, leafy spurge, field bindweed (creeping jenny), nodding thistle and burdock, or any other plant specifically identified by resolution of the Common Council. (Created 05-11)

d. "Destroy" means the complete killing of weeds or 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 boom or flowering stage. (Created 05-11)

6. The penalty provisions in this subsection are not exclusive and the City may elect to undertake any other method of enforcement in accord with the laws of the State of Wisconsin, including action to abate a public nuisance.

7.11 ABATEMENT OF PUBLIC NUISANCES.

(1) INSPECTION OF PREMISES. Whenever a complaint is made to the Mayor or City Common Council that a public nuisance exists within the City the same shall promptly be forwarded to the Health Department, law enforcement, the Chief of the Fire Department, or the Building Inspector who shall forthwith cause to be inspected the premises and shall make a written report of his findings to the City Common Council. (Rep. & Recr. 09-21)

(2) SUMMARY ABATEMENT. If the inspection officer shall determine that a public nuisance exists within the City and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Mayor may direct the proper officer to cause the same to be abated and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.

(3) ABATEMENT AFTER NOTICE. If the inspecting 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 serve notice on the person causing or maintaining the nuisance to remove the same within ten (10) days. If such nuisance is not removed within such ten (10) days, the proper officer shall cause the nuisance to be removed as provided in sub.(2).

(4) OTHER METHODS NOT EXCLUDED. Nothing in this Chapter shall be construed as prohibiting the abatement of public nuisances by the City Common Council or its officials in accordance with the laws of the State of Wisconsin.

7.12 COST OF ABATEMENT

In addition to any other penalty imposed by this Chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the City shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance, and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

7.13 PENALTY

Any person who shall violate any provision of this Chapter or permit or cause a public nuisance shall be

subject to a penalty as provided in Section 25.04 of this Municipal Code or as noted herein or both.