

9.01 HEALTH DEPARTMENT.

The Waukesha County Health Department shall constitute the Health Department for the City of Pewaukee. When the term "Health Department" or "Health Officer" is used in this Code, it shall refer to the Waukesha County Health Department.

9.02 ABATEMENT OF HEALTH NUISANCES.

The Health Department may abate public health nuisances as provided in Chapter 254, Wisconsin Statutes.

9.03 HEALTH RULES ADOPTED.

The Health Department may make reasonable and general rules for the enforcement of the provisions of this Chapter and for the prevention of the creation of health nuisances and the protection of the public health and welfare, and may where appropriate require the issuance of licenses and permits. All such regulations when approved by the City Common Council shall have the same effect as ordinances and any person violating any of such regulations and any lawful order of the Board shall be subject to a penalty as provided in Section 25.04 of this Code.

9.04 COMMUNICABLE DISEASES.

Chapter 252, Wisconsin Statutes, and DHSS Wisconsin Administrative Code, are adopted by reference and made a part of this Chapter, and the Health Department shall enforce the provisions thereof.

9.05 REGULATION OF NUISANCE-TYPE BUSINESSES.

1. PERMIT REQUIRED.

No person shall conduct within the City any business which has a tendency to create a public nuisance, except upon permit issued by the Health Department and subject to such conditions as the Department may impose.

2. DEFINITION.

A business which has a tendency to create a public nuisance is one which unless properly regulated may create the condition creating a public nuisance as defined in Section 7.02 of this Code.

3. ENACTMENT

This Section is enacted pursuant to Section 66.0415, Wis. Stats.

9.06 CONNECTION TO SEWER AND WATER.

1. WHEN REQUIRED.

Whenever a sewer or water main becomes available to any building used for human habitation, the property shall be connected to sewer and/or water upon the following circumstances:

a. When ordered to connect by the Waukesha County Health Department or the State of Wisconsin.

b. Sale, gift, devise or other transfer of the property other than to a spouse or child and where the value of the sale, gift, devise or transfer utilizes the value of the benefit of sewer and/or water in the transaction.

2. CONNECTION AT EXPENSE OF OWNER.

All connections to the Municipal water and/or sewer will be made at the expense of the owner. Failure by owner to connect under Section 9.06, Subsection (1) above may result in the connection being made by the City, and all expenses thereof assessed against the owner as a special charge under Section 66.0703, Wis. Stats. Such charge may be appealed to the City Common Council within thirty (30) days of its imposition.

3. PRIVIES, CESSPOOLS, ETC., PROHIBITED AFTER CONNECTION WITH SEWER.

After connection of any building used for human habitation to a sewer main, no privy, cesspool or water less toilet shall be used in connection with such human habitation.

9.07 SEWERAGE SLUDGE DISPOSAL.

1. DEFINITIONS.

As used in this Section:

a. "Sludge" shall mean the accumulated residual solids resulting from or accumulated in the processing of wastewater at a municipal wastewater treatment plant; the solids which are accumulated in a septic tank or sewage holding tank.

b. "Site or property site" shall mean the property on which the applicant intends to apply sludge. Each real estate tax parcel as found on the tax rolls of the City shall constitute a separate site or property site, or as defined by the City Common Council.

2. PERMIT REQUIRED.

No person, firm or corporation shall apply or allow to be applied to lands under their ownership, lease or control, sludge to any land located within the limits of the City without first having obtained a permit from the City Common Council. This shall apply to both existing and proposed sludge disposal operations. Applicants shall comply with the following conditions:

a. They are the legal owner of such lands or can provide evidence that they have permission from the legal owner of the land upon which the sludge is proposed to be applied.

b. They will provide evidence regarding the chemical, metal and biological content of the sludge and such sludge will meet the same requirements of the Wisconsin Department of Natural Resources (DNR) for the soil application of sludge from public wastewater treatment facilities.

c. Immediately following the placement on the soil, the sludge will be incorporated into the soil by plowing, injection or other means to completely cover the sludge with topsoil.

d. The land area to which the sludge is to be applied will be not less than twenty (20) acres and shall be depicted on a large scale drawing map of the general area of the City of Pewaukee in which the sludge application is to be located.

e. No sludge will be applied closer than four hundred (400) feet from a floodplain boundary, or closer than five hundred (500) feet from a residence unless written permission is received from the occupant of that residence.

f. The request for permission must be submitted to the City Common Council no sooner than forty-five (45) days prior to the date sludge is proposed to be applied to the land in the City of Pewaukee and the City Common Council reserves the right to approve or disapprove the requested permit. The City Common Council may request recommendation of the Plan Commission.

3. APPLICATION.

Written application for a permit to apply sludge on any lands located within the City of Pewaukee shall be made to the City Clerk. The application shall state:

a. The name and address of the applicants, and if the applicant is a corporation, the name, address and registered agent of the corporation.

b. The post office and legal description of the site to be used.

c. The names and addresses of the landowners and haulers involved with the proposed disposal of the sludge. A copy of any contract related to the proposed disposal shall be appended to the application.

d. The length of time the applicant intends to apply sludge on the site or sites described in the application.

e. The name or names and address of the owners of any other site or sites upon which the applicant is presently applying sludge, whether or not such site or sites are within or without the corporate limits of the City of Pewaukee. The requirements of this paragraph may be waived by the Planning Commission or City Common Council.

f. Names and addresses of all property owners within five hundred (500) feet of the boundaries of the proposed application site. Each property owner will be given a copy of this Ordinance by the applicant.

4. REFERRAL TO PLAN COMMISSION.

The City Clerk shall refer all applications for a permit under this Section to the Plan Commission for their recommendation to the City Common Council. The recommendation of the Plan Commission shall be presented to the City Common Council within sixty (60) days after such application for a permit is referred to the Plan Commission by the City Clerk. Upon receipt of such recommendation from the Plan Commission, the City Common Council shall set a date for hearing on the application for such permit and the Clerk shall notify the applicant of the date of such hearing. The applicant may present such evidence as it deems necessary to the City Common Council at such hearing in support of its application for a permit under this Section.

5. PERMIT FEE. (Rep. & Rec. 06-17)

The applicant shall accompany his application with a non-refundable annual permit fee as shall be established from time to time by resolution of the Common Council.

6. GRANTING OF PERMIT.

The City Common Council shall, after receiving the recommendations of the Plan Commission and after hearing thereon as herein provided, issue a permit hereunder if it finds that all the provisions of this Ordinance are complied with, including the following:

- a. That the sludge will be immediately incorporated with the soil, by injection, plowing or other means to completely cover the sludge with topsoil. There shall be absolutely no surface spreading). This paragraph applies only to sludge applicants.
- b. That the sludge will be applied in accordance with the appropriate regulations of the Department of Natural Resources and that approval has been obtained by the applicant from the DNR to apply sludge to the real estate described in the application.
- c. That no sludge will be applied at a distance less than five hundred (500) feet from the nearest residence, not located on actual application site.
- d. That the sludge will not be applied at a distance less than five hundred (500) feet from the nearest private water supply well and that the application of the sludge shall not constitute a possible contamination source for any water supply, regardless of the distance of the water supply from the disposal site.
- e. That the sludge will not be applied at a distance less than five hundred (500) feet from any stream, lake, pond, other channelized water way or floodplain.
- f. That the sludge will not be applied to any soil which, because of its composition, would tend to create a health hazard.
- g. That the applicant has applied for and received all appropriate licenses from county or state licensing authorities.
- h. That a copy of all reports required by the county or state be sent to the City Clerk at the same time as sent to the State.
- i. That the application of sludge will not constitute a nuisance in any manner.
- j. That the application of sludge will only take place during the hours of 9:00 A.M. to 3:00 P.M. and will not be applied to any site Saturday, Sunday, or holidays.
- k. Absolutely no City roads will be used for transporting sludge without prior approval of the City Common Council. Applicant must agree that all road damage or cleanups caused by applicant will be paid for by applicant and that monies can be taken from the cash bond if not paid within thirty (30) days of billing.
- l. "Wastewater treatment plant sludge" shall be applied only to DNR approved farm fields in accord with the current state and federal guidelines. The amount of -sludge which can be applied to a parcel of land in any one (1) given year shall be based on nutritional requirements and the allowable sludge metals as established by the most recent DNR and EPA regulations. In no case shall more than two percent (2%) of the permitted total allowable amount of any one or more metals be applied to the land per year. The total allowable amount of metals shall be determined using the soil location exchange capacity as analyzed by an approved laboratory for that specific parcel.

m. In the event the Plan Commission or the City Common Council requests an independent sample and test of any proposed sludge, applicant agrees to allow the taking of a sample and said independent test at any time or place requested so that the integrity of the sample is preserved. In the event that independent test results are found to vary significantly from the content of the sludge as presented by the applicant, applicant shall be prohibited from releasing said sludge, and shall submit to a complete reevaluation of future sludge applications in the City. Test results showing that more than two percent (2%) of the total soil capacity has been applied in any given calendar year shall constitute a significant variance under this paragraph. Costs of any and all such independent tests shall be the responsibility of applicant.

n. If the City Common Council does not find affirmatively with reference to any of the Section 9.07, Subsections (6)(a) through (m), above, inclusive, the application for such permit shall be denied.

7. TERM OF PERMIT.

A permit issued hereunder shall be for a period commencing on April 1 in the calendar year of application and ending on November 15 in the calendar year of application.

8. TESTING.

The City Common Council may require the applicant to conduct soil testing to determine the ability of the soil upon the premises described in the application to absorb sludge. The City Common Council may also require a sludge analysis every time sludge is used. The manner and type of such soil test and sludge analysis shall be determined by the City Common Council and all costs and expenses for such soil test and sludge analysis shall be paid by the applicant. All test results must be presented to the Plan Commission with application; the cost of which will come out of the bond if not paid within thirty (30) days of billing.

9. BONDS.

Before such permit shall be issued, the applicant shall file with the City Clerk a cash bond in the sum of \$2,500.00 and a surety bond in the sum of \$10,000.00 and proof of liability insurance conditioned upon and as a guarantee that the applicant will fully abide by all of the terms and provisions of this Ordinance and any other Ordinance of the City applicable thereto and any rules and regulations imposed by the City Common Council as conditions for granting of such permit.

10. NOTIFICATION.

At least seventy-two (72) hours prior to sewerage sludge disposal, written notification must be made to the City Common Council and any resident within fifteen hundred (1,500) feet of the site to be used. The notice will also include a list of the roads that will be used for hauling sludge.

11. PENALTY.

Any person, firm or corporation who violates this Section shall be subject, upon conviction to a forfeiture of not less than \$1,000.00 nor more than \$5,000.00, together with the cost of prosecution, and, in default of payment of such forfeiture and costs, shall be imprisoned in the County Jail until such forfeiture and costs are paid, for a period not exceeding ninety (90) days.

12. SEPARATE VIOLATIONS.

Each violation and each day a violation continues or occurs, shall constitute a separate offense.

13. CAUSE FOR WITHDRAWAL OF PERMIT.

Any violation of this Ordinance by any permittee will be cause for the City Common Council to withdraw permits already issued and suspend them for twelve (12) months from date of the violation.

9.08 REGULATION OF HOLDING TANKS.

1. INSTALLATION REGULATED.

No person, corporation or organization shall install, operate, repair, maintain or reconstruct any device designed for the holding of sewage wastes in the City of Pewaukee unless a permit therefore has been obtained under the following conditions:

2. HOLDING TANKS PERMITTED.

Holding tanks will be permitted to be installed, operated, repaired, maintained, or reconstructed in the City of Pewaukee only in those instances described as follows:

a. Residential.

Residential holding tanks will be permitted only to replace an existing failing system. No new residential construction will be serviced by a holding tank.

b. Commercial and industrial.

Holding tanks will be permitted for the replacement of existing septic or sewage systems and for new construction of commercial and industrial projects.

c. Agreement.

An agreement as provided by the City of Pewaukee, in form according to Exhibit "A" attached, shall be executed by the applicant for a holding tank. Said agreement shall provide as follows:

- (1) Applicant (owner) shall agree with the City to install a holding tank of adequate size for the use proposed as approved by the City Engineer or Plumbing Inspector.
- (2) Applicant (owner) shall agree to conform to all rules and regulations, Ordinances and Codes of the City of Pewaukee, as well as all regulations and statutes of the State of Wisconsin or Waukesha County, both in the installation and the maintenance of said holding tank.
- (3) Applicant (owner) shall agree to submit to the City of Pewaukee a copy of a contract or agreement signed by a State of Wisconsin approved or licensed holding tank pumping firm, which contract will provide for the periodic pumping of said holding tank whenever necessary at applicant's (owner's) expense. Applicant (owner) agrees that they will, whenever necessary, have said holding tank pumped out by a State approved waste-water holding tank pumping firm and further agrees to maintain said holding tank in proper repair and order at their expense. Applicant (owner) agrees that they will keep said hauling contract in full force and effect at all times and so long said holding tank use is continued. Any change of haulers by owner shall require owner to immediately substitute new hauler's agreement for the old.
- (4) Applicant (owner) shall agree that at any time said holding tank is not pumped as necessary, the City of Pewaukee or any designated officer thereof shall have the right on twenty-four (24) hours written notice to hire or otherwise accomplish the emptying of said tank at the expense of the owner. The City shall add to said cost fifteen percent (15%) additional charge for the administration of this Section. The total amount owed to the City if said amount remains unpaid for thirty (30) days shall be charged against the cash bond deposited by the owner with the City, and owner shall thereupon replenish said cash bond by the same amount. In addition to all other methods of collecting the expenses incurred herein, the City treasurer may place said charge as a special charge against the real estate taxes of the owner and may be collected as such according to statute, including the right by the City to replenish said cash bond if owner refuses.
- (5) Owner will agree in said agreement to grant to the City of Pewaukee full right, license and authority to enter upon their property for inspection, pumping and transportation from said holding tank.
- (6) As a further condition for the granting of said holding tank permit, owner agrees that they will pay all special assessments due if and when sanitary sewer becomes available, that they will grant all necessary easements for the installation of the same. The agreement signed by said owners shall constitute a waiver of all special assessment procedures and amounts. Owners further shall agree that they will connect up to said sanitary sewer within sixty (60) days of the date the same becomes available. In addition, when public sewer is available, owners agree to properly abandon the holding tank and appurtenances as required by law, the City Engineer or Plumbing Inspector.
- (7) Applicant (owner) shall simultaneously with the agreement referred to herein deposit with the City a cash bond in an amount as determined by the City Common Council from time to time to guarantee to the City reimbursement for any and all expenses incurred by the City in alleviating any nuisance occurring as a result of this holding tank. The cash bond shall at all times be maintained constantly at the amount originally deposited. Said bond shall be returned to owner upon proper connection to the public sewer and abandonment of said holding tank. Interest earned, if any, by said cash deposit shall be the property of the City of Pewaukee as an administrative charge by the City for administering said cash bond.
- (8) The agreement referred to herein shall be made a part of this Ordinance and shall be executed in

recordable form, shall contain the legal description of the owner's property benefited, and shall be recorded with the Register of Deeds for Waukesha County. All parties in interest to owner's property shall execute and be parties to the agreement. Applicant (owner) shall bear expense of recording.

(9) The agreement shall continue so long as the holding tank is maintained and shall terminate upon connection to public sewer and abandonment of the said holding tank.

(10) The said agreement, upon execution by applicant (owner), shall thereupon become a part of this Ordinance and enforceable as a part of this Ordinance as if it were contained herein.

d. Inspection.

In the event a violation ever occurs causing a nuisance, the City may inspect said holding tank on a monthly basis to insure that future violations do not occur. The fee for these inspections shall be the responsibility of the owner and in the event owner does not pay said inspection fees, the cost may then be added to the tax roll as a special real estate charge. The amount of the inspection fee shall be as determined from time to time by the Board.

e. Penalties.

In addition to the financial obligations provided for in this Ordinance, if the owner violates or permits violation of any provision of this Ordinance or the Holding Tank Agreement, said owner shall be liable to the City for a penalty as provided for in Section 25.04 of the Municipal Code for each violation of which convicted. Each day that a violation occurs or continues shall be considered a separate violation of this Ordinance.

f. Appeals.

In that the City of Pewaukee prohibits the installation of holding tanks for new residential construction, any person denied permission to install and operate a residential holding tank for new construction by the City Common Council, may petition the City Common Council for reconsideration of the City Common Council's denial and a variance to the prohibition.

The City Common Council shall upon receipt of any said petition as soon as practical call a public hearing thereon. Notice of the time and place of the hearing shall be given pursuant to the open meeting law.

As soon as possible after such public hearing, the City Common Council shall act on said petition either granting, denying, or conditionally granting the variance. In determining whether to grant, deny or conditionally grant the variance the City Common Council shall look to the standards as set forth in WIS. ADMIN. CODE COMM 81 and to the guidelines and past practice of Waukesha County.

The City of Pewaukee shall inform the Department of Commerce in writing of each variance granted.

9.09 PENALTY.

Any person who shall violate any provision of this Chapter shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

done and charge the cost of such pumping plus fifteen (15) percent for administration proportionately to the then owners of the real property know as _____ by placing the charge on the tax roll as a special charge under Section 66.0627, Wisconsin Statutes.

5. Applicant/Owner further agrees that the City or Waukesha County, their agents or assigns, are hereby granted the right, license, and authority to enter upon their property above-described to inspect, pump, and haul, if necessary, from the said holding tank. The City agrees to pump and transport the contents of said waste-water holding tank to an approved disposal site, if it becomes necessary to prevent or abate a nuisance as described in Section 254.59, Wis. Stats. (1999-2000), and if the Applicant/Owner does not do so in response to orders from the City.

6. Applicant/Owner agrees, that the then owner of the real property known as _____ will pay the special charges which may be made against such owners for their proper share of the cost of the connection of the sanitary sewer system constructed by the to the system, at such time as it may be determined by the City to install and assess the cost thereof. _____ shall use its best efforts to expedite said connection.

7. Applicant/Owner agrees that it will not, at the time of installation of the sanitary sewer, assess any claim as to lack of benefit by reason of the fact that they have been permitted to install a holding tank or holding tanks; and that they and their successors and assigns, will be precluded from asserting any defense in that respect to any charge made by the City for installation of said sanitary sewers.

8. The Applicant/Owner shall deposit with the City a cash bond in the sum of \$_____. This bond shall guarantee to the City reimbursement for any and all expenses incurred by the City in alleviating any nuisance which may occur as a result of the permission granted by this agreement for the owner to install a holding tank. The sum of \$_____ shall be maintained at all times and if monies are expended, the owners shall replenish the cash bond and maintain the same constantly at \$_____. Upon the installation, availability, and connection of the property involved to public sanitary sewerage facilities, the sum of \$_____ cash bond shall be returned to the owners.

9. It is understood that this agreement shall be binding upon the Applicant/Owner, their heirs and assigns and shall run with the above- described property.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals the day and year first above written.

The Common Council for the City for the City of Pewaukee has agreed that the City of Pewaukee will be the responsible party to the State and further agree to authorize the proper officials to sign an agreement with a private company engaged in and certified for the servicing of the holding tanks.

CITY OF PEWAUKEE
A Municipal Corporation

APPLICANT/OWNER

By: _____
Mayor

By: _____
Applicant/Owner

ATTEST:

By: _____
City Clerk

By: _____
Owner (if other than Applicant)

STATE OF WISCONSIN)
)ss.
COUNTY OF WAUKESHA)

Personally came before me this ____ day of _____, 200____,
the above-named _____ and _____, of the City of
Pewaukee, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

NOTARY PUBLIC, STATE OF WISCONSIN
My Commission expires _____.

STATE OF WISCONSIN)
)ss.
COUNTY OF WAUKESHA)

Personally came before me this ____ day of _____, 200____,
the above-named _____ and _____, of the City of
Pewaukee, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

NOTARY PUBLIC, STATE OF WISCONSIN
My Commission expires _____.

STATE OF WISCONSIN)
)ss.
COUNTY OF WAUKESHA)

Personally came before me this ____ day of _____, 200____,
the above-named _____ and _____, of the City of
Pewaukee, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

NOTARY PUBLIC, STATE OF WISCONSIN
My Commission expires _____.

RECEIVED FOR RECORDING

Recorded this ____ day of _____, A.D., 200____, at _____ o'clock ____M. and
recorded in Volume _____ of _____, Page _____.

Register of Deeds
Waukesha County

This instrument was drafted by the State of Wisconsin Department of Commerce, Bureau of Plumbing and by Attorney John P. Macy.