

# **CODE OF ORDINANCES**

## Chapter 1

### **GENERAL PROVISIONS**

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## **Sec. 1-1 Title; effective date; citation**

These ordinances shall be known as the "Code of the Town of Beaver Dam, Wisconsin" and shall take effect from and after passage and publication as provided in Wis. Stats § 66.0103. All references thereto shall be cited by section number (example: section 1-6, Code of the Town of Beaver Dam, Wisconsin).

## **Sec. 1-2 Definitions and rules of construction**

In the construction of this Code, the following definitions and rules of construction shall be observed unless such construction would be inconsistent with the manifest intent of the ordinance:

*Acts of agents.* When a provision requires an act to be done which may by law as well be done by an agent as by the principal, such requirements shall be construed to include all such acts when done by an authorized agent.

*Code.* Whenever the term "Code" is used without further qualification, it shall mean the "Code of the Town of Beaver Dam, Wisconsin," as designated in section 1-1.

*Computation of time.* The time within which an act is to be done or proceeding had or taken shall be computed by excluding the first day and including the last; and when any such time is expressed in hours the whole of Sunday and of any town recognized holiday, from midnight to midnight, shall be excluded. If the last day within which an act is to be done or proceeding had or taken falls on Sunday or legal holiday the act may be done or the proceeding had or taken on the next secular day. When the last day within which a proceeding is to be had or taken or an act done, which consists of any payment to or the service upon or filing with any officer, agent, agency, department or division of the state or of the county, or a city, village, town, school district or other division of the state, of any money, return, statement, report, notice or other document, falls on a Saturday and the duly established official office hours of such officer, agent, agency, department or division to which such payment is to be made or upon which such service is to be made or with which such return, statement, report notice or other document is required to be filed, do not include any office hours thereof on such Saturday, such proceeding may be had or taken or such act may be done on the next succeeding day that is not a Sunday or legal holiday. Regardless of whether the time limited in any ordinance for the taking of any proceeding or the doing of any act is measured from an event or from the date or day on which such event occurs, the day on which such event took place shall be excluded in the computation of such time. The expression "legal holiday," as used in this section, means any statewide legal holiday provided in Wis. Stats. § 895.20. When an act is permitted to be done by the use of the postal service, and the last day within the time prescribed by law for performing such act falls on a legal public holiday under federal law, or other holiday designated by the president such that the postal service does not receive registered mail or make regular deliveries on that day, the day shall be considered a legal holiday for purposes of this definition.

*County.* The term "county" means Dodge County, Wisconsin.

*Following.* The term "following" means next after.

*Gender, singular and plural.* Every word in this Code and in any ordinance imparting the masculine gender may extend and be applied to females as well as males, and every word imparting the singular number only may extend and be applied to several persons or things as well as to one person or thing; provided, however, that these rules of construction shall not be applied to any provision which contains any express language excluding such construction or when the subject matter or context of such provision may be repugnant thereto.

*Includes.* The term "includes" does not limit a term to a specified example.

*May.* The term "may" is to be construed as being permissive and not mandatory.

*May not.* The term "may not" states a prohibition.

*Month.* The term "month" means a calendar month.

*Oath.* The term “oath” includes affirmation in all cases where by law an affirmation may be substituted for an oath. If any oath or affirmation is required to be taken, such oath or affirmation shall be taken before and administered by some officer authorized by law to administer oaths, at the place where the same is required to be taken or administered, unless otherwise expressly directed, and, when necessary, duly certified by such officer. If an oath is administered, it shall end with the words: “so help me God.” In actions and proceedings in the courts, a person may take an oath or affirmation in communication with the administering officer by telephone or audiovisual means.

*Officers and employees.* Whenever any officer or employee is referred to by title, such as “town clerk” or “clerk,” such reference shall be construed as if followed by the words: “Town of Beaver Dam, Dodge County, Wisconsin.”

*Owner.* The term “owner,” as applied to a building or land shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or marital property or survivorship marital property, of the whole or art of such building or land.

*Person.* The term “person” extends and applies to natural persons, firms, corporations, associations, partnerships or other bodies politic and to all entities capable of being sued, unless plainly inapplicable.

*Personal property.* The term “personal property” includes every species of property except real property.

*Preceding.* The term “preceding” means next before.

*Premises.* The term “premises,” as applied to real property, includes land and structures.

*Property.* The term “property” includes real property, personal property and mixed property.

*Real property, real estate, land, lands.* The terms “real property,” “real estate,” “land,” or “lands” includes land, tenements and hereditaments.

*Shall.* The term “shall” is to be construed as being mandatory

*Signature.* If the signature of any person is required by law, it shall always be the handwriting of such person or, if the person is unable to write, the person's mark or the person's name written by some other person at the person's request and in the person's presence.

State law reference—Similar provisions, Wis. Stats. § 990.01(38).

*State.* The term “state” means the State of Wisconsin.

*Street.* The term “street” means any alley, avenue, boulevard, highway, road, lane, viaduct, bridge and the approach thereto, and any other public thoroughfare in the town. “Street” also means the entire width thereof between abutting property lines. “Street” includes a sidewalk or footpath.

*Tenant, occupant.* The terms “tenant” or “occupant,” as applied to a building or land, includes:

- (1) Any person holding either alone or with others a written or oral lease of such building or land.
- (2) Any person who either alone or with others occupies such building or land.

*Tense.* Terms used in the past or present tense include the future as well as the past and present.

*Town.* The term “town” means the Town of Beaver Dam, Dodge County, Wisconsin.

*Town board, board.* The terms “town board” or “board” means the board of supervisors of the Town of Beaver Dam, Dodge County, Wisconsin.

*Week.* The term “week” means a period of seven consecutive days.

*Wisconsin Statutes.* All references to “Wisconsin Statutes” or “Wis. Stats.” means the current edition of the Wisconsin Statutes and includes the most recent biennial session.

*Writing.* The term “writing” includes any form of recorded message capable of comprehension by ordinary visual means.

*Year.* The term “year” means a calendar year.

### **Sec. 1-3 Catchlines of sections; history notes, references, editor's notes**

- (a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not titles of such sections, or of any part of the section, nor unless expressly so provided shall they be so deemed when any such section, including the catchline, is amended or reenacted.
- (b) The history or source notes appearing in parenthesis after sections in this Code have no legal effect and only indicate legislative history.
- (c) Unless specified otherwise, all references to chapters or sections are to chapters or sections of this Code.
- (d) Editor's notes and other references appearing after sections through this Code are not intended to have any legal effect but are merely intended to assist the user of the Code.

#### **Sec. 1-4 Provisions deemed continuation of existing ordinances**

The provisions of this Code, insofar as they are substantially the same as legislation previously adopted by the town relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

#### **Sec. 1-5 Certain ordinances not affected by Code**

- (a) Nothing in this Code or the ordinance adopting this Code affects the validity of any ordinance or portion of an ordinance:
  - (1) Promising or guaranteeing the payment of money or authorizing the issuance of bonds or other instruments of indebtedness.
  - (2) Adopting or amending the comprehensive plan.
  - (3) Dedicating, accepting or vacating any plat or subdivision.
  - (4) Regarding a master plan.
  - (5) Regarding the town drug and alcohol policy.
  - (6) Regarding a cable television franchise.
  - (7) Regarding zoning.
  - (8) That is temporary, although general in effect.
  - (9) That is special, although permanent in effect.
  - (10) The purpose of which has been accomplished.
- (b) The ordinances designated in subsection (a) of this section continue in full force and effect to the same extent as if published at length in this Code.

#### **Sec. 1-6 Repeal of general ordinances**

All ordinances heretofore adopted by the town board and not codified in this Code are repealed, except all ordinances or parts of ordinances relating to the following subjects and not conflicting with any of the provisions of this Code:

- (1) The issuance of corporate bonds and notes of the town of whatever name or description.
- (2) The establishment of grades, curblines and widths of sidewalks in the public streets and alleys.
- (3) The fixing of salaries of public officials and employees.
- (4) Rights, licenses or franchises, or the creation of any contract with the town.
- (5) The lighting and naming of streets and alleys.
- (6) The naming and changing of names of streets, alleys, public grounds and parks.

- (7) The letting of contracts without bids.
- (8) Tax and special assessment levies.
- (9) Releases of persons, firms or corporations from liability.
- (10) Construction of public works.
- (11) Budget ordinances, resolutions and actions.
- (12) Establishing bulkhead lines.

### **Sec. 1-7 Effect of repeals**

The repeal or amendment of any section or provision of this Code or of any other ordinance or resolution of the board shall not:

- (1) By implication be deemed to revive any ordinance not in force or existing at the time such repeal or amendment takes effect.
- (2) Affect any vested right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or amended, unless the privilege of repealing such obligation or privilege has been reserved by the town.
- (3) Affect any offense committed, or penalty or forfeiture incurred, previous to the time when any ordinance is repealed or amended; except when any forfeiture or penalty has been mitigated by the provisions of any ordinance, such provisions shall apply to and control any judgment to be pronounced after such ordinance takes effect for any offense committed before that time.
- (4) Affect any prosecution for any offense, or the levy of any penalty or forfeiture pending at the time when any ordinance is repealed or amended; but the right of action shall continue and the offender shall be subject to the penalty as provided in such ordinance, and such prosecution shall proceed, in all respects, as if such ordinance had not been repealed; except all such proceedings had after the time this Code takes effect shall be conducted according to the provisions of this Code.

### **Sec. 1-8 Code does not affect prior offenses or rights**

- (a) Nothing in this Code or the ordinance adopting this Code affects any offense or act committed or done, any penalty or forfeiture incurred, or any contract or right established before the effective date of this Code.
- (b) The adoption of this Code does not authorize any use or the continuation of any use of a structure or premises in violation of any town ordinance on the effective date of this Code.

### **Sec. 1-9 General penalty; continuing violations**

- (a) *General penalty.* Except as otherwise provided, any person who shall violate any of the provisions of this Code shall, upon conviction of such violation, be subject to a penalty which shall be as follows:
  - (1) *First offense.* Any person who shall violate any provision of this Code shall, upon conviction thereof, forfeit not less than \$5.00 nor more than \$500.00, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the county jail until such forfeiture and costs are paid, but not exceeding 90 days.
  - (2) *Second offense.* Any person found guilty of violating any ordinance or part of an ordinance of this Code who has previously been convicted of a violation of the same ordinance within one year shall, upon conviction thereof, forfeit not less than \$10.00 nor more than \$1,000.00 for each such offense, together with the costs of prosecution, and in default of payment of such forfeiture and costs shall be imprisoned in the county jail until such forfeiture and costs are paid, but not exceeding six months.

- (b) *Continued violations.* Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Code shall preclude the town from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.
- (c) *Execution against defendant's property.* Whenever any person fails to pay any forfeiture and costs of prosecution upon the order of any court for violation of any ordinance, the court may, in lieu of ordering imprisonment of the defendant or after the defendant has been released from custody, issue an execution against the property of the defendant for such forfeiture and costs.
- (d) *Citation method of enforcement.*
  - (1) *Statutory authorization.* Pursuant to Wis. Stats. § 66.0113, the town elects to use the citation method of enforcement of ordinances, including those for which a statutory counterpart exists, and such statute is incorporated and made a part of this section by reference as is fully set forth in this section.
  - (2) *Information required.* The municipal citation shall contain the following information:
    - a. The name and address of the alleged violator.
    - b. The factual allegations describing the alleged violation.
    - c. The time and place of the offense.
    - d. The section of the Code violated.
    - e. A designation of the offense in a manner that can be readily understood by a person making a reasonable effort to do so.
    - f. The time at which the alleged violator may appear in court.
    - g. A statement which in essence informs the alleged violator that:
      - 1. The alleged violator may make a cash deposit of a specified amount to be mailed to a specified official within a specified time.
      - 2. If the alleged violator makes such a deposit, he need not appear in court unless subsequently summoned.
      - 3. If the alleged violator makes a cash deposit and does not appear in court, he either will be deemed to have tendered a plea of no contest and submitted to a forfeiture, a penalty assessment imposed by Wis. Stats. § 757.05, a jail assessment imposed by crime laboratories and drug law enforcement assessment imposed by Wis. Stats. § 165.755, any applicable consumer protection assessment imposed by Wis. Stats. § 100.261, and any applicable domestic abuse assessment imposed by Wis. Stats. § 973.055(1) not to exceed the amount of the deposit or will be summoned into court to answer the complaint if the court does not accept the plea of no contest.
      - 4. If the alleged violator does not make a cash deposit and 'does not appear in court at the time specified, the court may issue a summons or a warrant for the defendant's arrest or consider the nonappearance to be a plea of no contest and enter judgment under subsection g.4., or the municipality may commence an action against the alleged violator to collect the forfeiture, the penalty assessment posed by Wis. Stats. § 757.05, the jail assessment imposed by Wis. Stats. § 302.46(1), the crime laboratories and drug law enforcement assessment imposed by Wis. Stats. § 165.755, any applicable consumer protection assessment imposed by Wis. Stats. § 100.261, and any applicable domestic abuse assessment imposed by Wis. Stats. § 973.055(1).
      - 5. If the court finds that the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and that the violation resulted in damage to the property of or physical injury to a person other than the alleged violator, the court may summon the alleged violator into court to determine if restitution shall be ordered under Wis. Stats. § 800.093.

- h. A direction that if the alleged violator elects to make a cash deposit, the alleged violator shall sign an appropriate statement which accompanies the citation to indicate that he or she read the statement required under subsection (d)(2)g of this section and shall send the signed statement with the cash deposit.
  - i. Such other information as may be deemed necessary
- (3) *Schedule of deposits.* The schedule of cash deposits for use with citations issued under this section shall be as adopted by the town board from time to time, and such schedule shall be on file in the office of the chief of police and in the office of the clerk.
  - (4) *Form of deposits.* Deposits shall be in cash, money order or certified check to the town treasurer or to the clerk of courts, circuit court branch III, who shall provide a receipt therefor.
  - (5) *Issuance of citation.* Any law enforcement officer may issue citations authorized under this section.
  - (6) *Procedure.* Wis. Stats. § 66.0113(3) relating to violator's options and procedure on default, is adopted and incorporated in this section by reference.
  - (7) *Nonexclusivity.*
    - a. *Other ordinance.* This section does not preclude the board from adopting any other ordinance or providing for the enforcement of any law or ordinance relating to the same or other matter.
    - b. *Other remedies.* The issuance of a citation under this section shall not preclude the town or any authorized officer from proceeding under any other ordinance or law or by any other enforcement method to enforce any ordinance, regulation or order.

**Sec. 1-10 Amendments to Code; effect of new ordinances; amendatory language**

- (a) All ordinances adopted subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of the Code and printed for inclusion in the Code. Portions of this Code repealed by subsequent ordinances may be excluded from this Code by omission from reprinted pages affected thereby.
- (b) Amendments to provisions of this Code may be made with the following language: "Section (chapter, article, division or subdivision, as appropriate) of the Code of the Town of Beaver Dam, Wisconsin is hereby amended to read as follows: . . . ."
- (c) If a new section, subdivision, division, article or chapter is to be added to the Code, the following language may be used: "Section (chapter, article, division or subdivision, as appropriate) of the Code of the Town of Beaver Dam, Wisconsin is hereby created to read as follows: . . . ."
- (d) All provisions desired to be repealed should be repealed specially by section, subdivision, division, article or chapter number, as appropriate, or by setting out the repealed provisions in full in the repealing ordinance.

### **Sec. 1-11 Keeping Code current; revisor's amendments**

- (a) The town clerk shall certify one copy of the Code as the Official Code of the town and shall retain such copy in his office and shall keep such copy current by insertion of all supplemental sheets as provided in subsection (b) of this section.
- (b) Whenever any ordinance amending, repealing, revising or creating any section of this Code is adopted by the town board, the clerk, after recording such ordinance in the ordinance book, shall forward a copy of such ordinance or resolution to the revisor, who shall incorporate it into the Code. The revisor shall make no substantive changes to such ordinances and resolutions but may renumber, rearrange and edit them without first submitting them to the town board. Such renumbering, rearranging and editing shall not affect the validity of such ordinances and resolutions or the provisions of this Code affected thereby.

### **Sec. 1-12 Clerk to file documents incorporated by reference**

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

### **Sec. 1-13 Conflict and separability**

- (a) *Conflict of provisions.* If the provisions of the different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions arising out of the subject matter of such chapter.
- (b) *Separability of Code provisions.* If any section, subsection, sentence, clause or phrase of the Code is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof. The board hereby declares that it would have passed this Code and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one of more sections, subsections, sentences, clauses, phrases or portions may be declared invalid or unconstitutional.

### **Sec. 1-14 Responsibility for acts; aiding and abetting**

Every person concerned in the commission of any act prohibited by this Code, whether any person directly commits the act or prosecutes, counsels, aids or abets in its commission, may be prosecuted and, upon conviction, is punishable as if such person had directly committed such act.