

# TITLE 1

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## **General Provisions for Use of Code of Ordinances**

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# Title 1 ► Chapter 1

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## Use and Construction of Code of Ordinances

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### **Sec. 1-1-1 Title of Code; Citation.**

These collected Ordinances shall be known and referred to as the "Code of Ordinances, City of Owen, Wisconsin." References to the Code of Ordinances, City of Owen, Wisconsin, shall be cited as follows: "Section 2-1-1, Code of Ordinances, City of Owen, Wisconsin."

### **Sec. 1-1-2 Principles of Construction.**

The following rules or meanings shall be applied in the construction and interpretation of ordinances codified in this Code of Ordinances unless such application would be clearly inconsistent with the plain meaning or intent of the ordinances:

- (a) **Acts by Agents.** When an ordinance requires an act be done by a person which may be legally performed by an authorized agent of that principal person, the requirement shall be construed to include all acts performed by such agents.
- (b) **City.** "City" shall refer to the City of Owen, Clark County, Wisconsin.
- (c) **Code and Code of Ordinances.** The words "Codes," "Municipal Code" and "Code of Ordinances" when used in any section of this Code shall refer to this Code of Ordinances of the City of Owen unless the context of the section clearly indicates otherwise.
- (d) **Computation of Time.** In computing any period of time prescribed or allowed by these Ordinances, the day of the act or event from which the period of time begins to run shall not be included, but the last day of the period shall be included, unless it is a Saturday, a Sunday or a legal holiday. If the period of time prescribed or allowed is less than seven (7)

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days, Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in this Section, "legal holiday" means any statewide legal holiday specified by state law and any other City holiday designated by the Common Council.

- (e) **Fine.** The term "fine" shall be the equivalent of the word "forfeiture," and vice versa.
- (f) **Gender.** Every word in these Ordinances referring to the masculine gender shall also be construed to apply to females, and vice versa; the masculine gender is used solely in the interest of brevity.
- (g) **General Rule.** All words, phrases and ordinances shall be construed according to their plain meaning in common usage and shall be liberally construed in favor of the Municipality. However, words or phrases with a technical or special meaning shall be understood and construed according to that technical or special meaning if such is the intent of the Ordinances. Unless specifically defined below, words and phrases used in this Code of Ordinances shall have the same meaning as they have at common law and to give this Code of Ordinances its most reasonable application. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.
- (h) **Joint Authority.** All words purporting to give a joint authority to three (3) or more City officers or employees shall be construed as giving such authority to a majority of such officers of other persons.
- (i) **Officers.** The term "officers" shall refer solely to local offices created by state statute.
- (j) **Officials.** The term "officials" shall mean all City officers and employees.
- (k) **Person.** The word "person" shall mean any of the following entities: natural persons, corporations, partnerships, associations, limited liability companies, firms, bodies politic, joint venture, joint stock company, association, public or private corporation, the United States, the State of Wisconsin, including any unit or division thereof, any county, city, village, town, municipal utility, municipal power district or other governmental unit, cooperative, estate, trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any court or otherwise acting on behalf of others, or any other entity of any kind which is capable of being sued (includes singular as well as plural).
- (l) **Repeal.** When any ordinance having the effect of repealing a prior ordinance is itself repealed, such repeal shall not be construed to revive the prior ordinance or any part thereof, unless expressly so provided.
- (m) **Singular and Plural.** Every word in these Ordinances referring to the singular number only shall also be construed to apply to several persons or things, and every word in these Ordinances referred to a plural number shall also be construed to apply to one (1) person or thing.
- (n) **Tense.** The use of any verb in the present tense shall not preclude the interpretation of the verb in the future tense where appropriate.
- (o) **Wisconsin Statutes.** The term "Wisconsin Statutes" and its abbreviation as "Wis. Stats." shall mean, in these Ordinances, the Wisconsin Statutes for the year 2009-10 as amended; future amendments shall be incorporated herein.

- (p) **Wisconsin Administrative Code.** The term "Wisconsin Administrative Code" and its abbreviation as "Wis. Adm. Code" shall mean the Wisconsin Administrative Code as of the adoption of this Code, as amended or renumbered from time to time.

*State Law Reference:* Legal holidays, Sec. 256.17, Wis. Stats.

### **Sec. 1-1-3 Conflict of Provisions.**

- (a) If the provisions of different chapters conflict with each other, the provisions of each individual chapter shall control all issues arising out of the events and persons intended to be governed by that chapter.
- (b) If the provisions of different sections of the same chapter conflict with each other, the provision which is more specific in its application to the events or persons raising the conflict shall control over the more general provision.

### **Sec. 1-1-4 Separability of Provisions.**

If any provision of this Code of Ordinances 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 provisions of these ordinances.

### **Sec. 1-1-5 Effective Date of Ordinances.**

- (a) **Code.** The Code of Ordinances, City of Owen, Wisconsin, shall take effect from and after passage and publication as provided by state law.
- (b) **Subsequent Ordinances.** All Ordinances passed by the Common Council subsequent to the adoption of the Code of Ordinances, except when otherwise specifically provided, shall take effect from and after their publication.

*State Law Reference:* Municipal Code, Sec. 66.0103, Wis. Stats.

### **Sec. 1-1-6 Repeal of General Ordinances.**

- (a) **Ordinances Repealed.** All general Ordinances heretofore adopted by the Common Council are hereby repealed. This shall not include any Ordinances or parts of Ordinances or resolutions relating to the following subjects and not conflicting with the provisions of

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this Code, except that some of the following provisions may be amended by this Code of Ordinances:

- (1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this ordinance;
  - (2) Any ordinance or resolution promising or guaranteeing the payment of money for the City, or any contract or obligations assumed by the City;
  - (3) The administrative Ordinances or resolutions of the City not in conflict or inconsistent with the provisions of the Code;
  - (4) Any appropriation ordinance or resolution;
  - (5) Any right or franchise granted by the Common Council to any person, firm or corporation;
  - (6) Any ordinance or resolution dedicating, naming, establishing, locating, relocating, opening, closing, paving, widening, vacating, etc., any street or public way in the City;
  - (7) Any ordinance or resolution establishing or prescribing the street grades of any streets in the City;
  - (8) Any ordinance or resolution providing for local improvements or assessing taxes or special assessments therefor;
  - (9) Any ordinance or resolution dedicating or accepting any plat or subdivision in the City, or establishing regulations for the same;
  - (10) Any ordinance annexing property to the City;
  - (11) Any ordinance or resolution regulating the erection, alteration, repair, maintenance, demolition, moving or removal of buildings or other structures;
  - (12) Zoning ordinances; dwelling building code; and other building code ordinances.
  - (13) Charter ordinances.
  - (14) The issuance of corporate bonds and notes of the City of whatever name or description.
  - (15) Water, electric and sewer rates, rules and regulations and sewer and water main construction.
  - (16) Any ordinance or resolution establishing salaries of officers or employees of the City.
- (b) **Effect of Repeals.** The repeal or amendment of any provision of this Code or of any other ordinance or resolution of the Common Council shall not:
- (1) Affect any rights, privileges, obligations or liabilities which were acquired or incurred or which had accrued under the repealed or amended provision, unless the City has expressly reserved the right to revoke such right, privilege, obligation or liability.
  - (2) Affect any offense, penalty or forfeiture, or prosecution for any offense, or levy of any penalty or forfeiture which has arisen prior to the repeal or amendment of the relevant provision of any ordinance or resolution. The preceding sentence shall not preclude the application of a lesser penalty or forfeiture if the new amending or repealing provision contains such a lesser penalty or forfeiture. The procedure for prosecution of any violations of Ordinances repealed or amended shall be conducted

according to the procedure set forth in the new amending or repealing provision or other procedure currently in effect.

## **Sec. 1-1-7 General Penalty.**

- (a) **General Penalty.** Except where a penalty is provided elsewhere in this Code, any person over the age of eighteen (18) years 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 — Penalty.** Any person over the age of eighteen (18) years who shall violate any provision of this Code shall, upon conviction thereof, forfeit not less than Fifty Dollars (\$50.00) nor more than One Thousand Five Hundred Dollars (\$1,500.00), together with all costs, surcharges, penalty assessments, and any other taxable item of cost as provided for by the laws of the State of Wisconsin as applicable to forfeiture actions that are in effect at the time of the offense, and any other taxable costs as imposed by any other provision of this Code.
  - (2) **Second and Subsequent Offenses — Penalty.** Any person over the age of eighteen (18) years who is 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 or part of an ordinance within three (3) years from the date of the last offense to the date of the current offense shall, upon conviction thereof, forfeit not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00) for each such offense, together with all costs, surcharges, penalty assessments, and any other taxable item of cost as provided for by the laws of the State of Wisconsin as applicable to forfeiture actions that are in effect at the time of the offense, and any other taxable costs as imposed by any other provision of this Code.
- (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 City from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.
- (c) **Other Remedies.**
- (1) The City shall have any and all other remedies afforded by the Wisconsin Statutes in addition to the forfeitures and costs of prosecution above.
  - (2) Execution or assessment against defendant's property. Whenever any person fails to pay a forfeiture and costs of prosecution upon the order of any court for violation of any ordinance of the City, 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 said forfeiture and costs. In the alternative, upon authorization of the court imposing any such forfeiture and costs, such sum as remains unpaid shall be assessed against any real property owned by the defendant within the City and shall be added to the City's portion of the property tax liability.

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- (3) In addition to any forfeiture imposed under this Section or any other penalty section of the Code of Ordinances of the City of Owen, the City may institute an action or proceeding to enjoin any violation; and such violation or any nonpayment of any forfeiture and costs shall constitute the basis for revocation or denial of any and all licenses and permits wherein the City is the issuing authority.
- (4) Upon stipulation of the parties, and subject to the approval of the court upon a finding that such stipulation is in the public interest and serves the interests of justice, the court may impose terms not to exceed Two Hundred Fifty Dollars (\$250.00) against a defendant upon dismissal of the action. The Clerk of Court (if created) or other City collection official shall, within seven (7) days of receipt thereof, transfer such sum to the City Clerk-Treasurer for deposit in the General Fund.
- (d) **Time to Pay.** Any forfeiture and costs imposed as a penalty pursuant to this Section or any penalty provisions of this Code shall be payable forthwith if so ordered by the court; however, the court may, in its discretion, allow reasonable time for payment, or reasonable payment plans, considering the defendant's ability to pay, and the court shall allow any time for payment or payment plan as provided for by any state law applicable at the time of imposition of the forfeiture.
- (e) **Disposition of Children Twelve (12) Through Seventeen (17) Years of Age Adjudged to Have Violated an Ordinance.**
  - (1) If the court finds a child twelve (12) through seventeen (17) years of age violated an ordinance adopted by this Code, other than an ordinance enacted under Sec. 118.163, Wis. Stats., or Subsections 11-4-4(a) or (b), 11-4-6(b) or 11-4-7 of this Code of Ordinances, it shall enter an order making one (1) or more of the dispositional orders permitted under Sec. 48.343(1),(2),(4),(5),(6),(7) or (8), Wis. Stats.
  - (2) Upon stipulation of the parties and subject to the approval of the court upon a finding that such stipulation is in the public interest and serves the interests of justice, the court may impose terms not to exceed One Hundred Dollars (\$100.00) against the defendant upon dismissal of the action. The Clerk of Court or other City collection official shall, within seven (7) days of receipt thereof, transfer such sum to the City Treasury for deposit in the General Fund.
- (f) **Court Authority to Impose Alternative Juvenile Dispositions and Sanctions.**
  - (1) For a juvenile adjudged to have violated an ordinance, a court is authorized to impose any of the dispositions listed in Secs. 48.355 and 938.344, Wis. Stats., in accordance with the provisions of those statutes.
  - (2) For a juvenile adjudged to have violated an ordinance who violates a condition of a dispositional order of the court under Secs. 938.343 or 938.344, Wis. Stats., a court is authorized to impose any of the sanctions listed in Sec. 938.355(6)(d), Wis. Stats., in accordance with the provisions of those statutes.
  - (3) This Subsection is enacted under the authority of Sec. 938.17(2)(cm), Wis. Stats.
- (g) **Juvenile Disposition Alternatives for Alcohol/Drug Offenses.**
  - (1) If a juvenile is found to have engaged in underage drinking of alcohol, drinking of alcohol on school premises or at a school sponsored activity, falsifying proof of age,



possessing drug paraphernalia, delivery of drug paraphernalia to a minor in violation of City ordinances, the Court may order any of the following:

- a.
    1. A forfeiture;
    2. Suspension or revocation of the juvenile's driver's license;
    3. Participation in a supervised work program;
  - b. After ordering any of the above penalties, the Court may, with the juvenile's agreement, enter an additional order staying the execution of the penalty order and suspending or modifying the penalty imposed and may require the juvenile to do any of the following:
    1. Submit to an Alcohol or Other Drug Abuse (AODA) assessment;
    2. Participate in an outpatient AODA treatment program if an AODA assessment recommends treatment;
    3. Participate in an AODA education program.
- (2) In addition to the dispositions listed above, the Court may order a juvenile to participate in a teen court program if the following conditions are satisfied:
- a. The chief judge of the judicial administrative district has approved a teen court program established in juvenile's county of residence and the judge determines that participation in the court program will likely benefit the juvenile and the community;
  - b. The juvenile admits or pleads no contest to the allegations that the juvenile was truant in open court with the juvenile's parent, guardian or legal custodian present;
  - c. The juvenile has not successfully completed participation in a teen court program during the two (2) years before the date of the alleged violation.
- (3) If the Court finds that a juvenile's parent or guardian is unable to provide or refuses to provide court-ordered AODA services for the juvenile through his or her health insurance or other third (3rd) party payments, the Court may order the parent or health insurer to pay.
- (4) If payment is not attainable as described in Subsection (g)(3) above, the Court may order the municipality to pay for any AODA services so ordered.
- (h) **Dispositional Alternatives for Other Ordinance Violations.** The Court may impose one (1) or more of the following dispositional alternatives against a juvenile found to have violated a municipal ordinance, for which no penalty is otherwise provided, as follows:
- (1) Counseling for the juvenile and/or the parent or guardian;
  - (2) A forfeiture not to exceed the maximum forfeiture that may be imposed on an adult for committing the same violation.
  - (3) If the forfeiture is for a violation that is only applicable to a juvenile, the maximum forfeiture amount is Fifty Dollars (\$50.00) plus costs;
  - (4) Suspend a fishing, hunting or driving license from ninety (90) days to five (5) years for failure to pay the forfeiture;

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- (5) Order the juvenile to participate in a supervised work program or other community service work;
  - (6) Order participation in an AODA assessment, an outpatient AODA treatment or an AODA education program;
  - (7) Order participation in a pupil assistance program provided by the juvenile's school provided the juvenile's school agrees;
  - (8) In addition to the dispositions listed above, the Court may order a juvenile to participate in a teen court program if the following conditions are satisfied:
    - a. The chief judge of the judicial administrative district has approved a teen court program established in juvenile's county of residence and the judge determines that participation in the court program will likely benefit the juvenile and the community;
    - b. The juvenile admits or pleads no contest to the allegations that the juvenile was truant in open court with the juvenile's parent, guardian or legal custodian present;
    - c. The juvenile has not successfully completed participation in a teen court program during the two (2) years before the date of the alleged violation.
- (i) **Violation of Juvenile Dispositional Orders.** The Court may impose the following sanctions on a juvenile who has violated a City ordinance and who has violated a condition of his or her dispositional order:
- (1) Suspend the juvenile's operating privilege for a period not more than ninety (90) days;
  - (2) Detain the juvenile in his or her home or current residence for not more than thirty (30) days without electronic monitoring;
  - (3) Order no more than twenty-five (25) hours of community service work in a supervised work program.

*State Law Reference:* Sec. 66.0109, Wis. Stats.

**Sec. 1-1-8 City Clerk-Treasurer to Maintain Copies of Documents Incorporated by Reference.**

Whenever any standard code, rule, regulation, statute or other written or printed matter is adopted by reference, it shall be deemed incorporated in this Code as if fully set forth herein and the City Clerk-Treasurer shall maintain in his/her office a copy of any such material as adopted and as amended from time to time. Materials on file at the City Clerk-Treasurer's office shall be considered public records open to reasonable examination by any person during the office hours of the City Clerk-Treasurer subject to such restrictions on examination as the City Clerk-Treasurer imposes for the preservation of the material.

## Title 1 ► Chapter 2

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# Enforcement of Ordinances; Issuance of Citations

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### **Sec. 1-2-1 Method of Enforcement.**

The City of Owen hereby elects to use the citation method of enforcement of ordinances. All City law enforcement officers and other City personnel charged with the responsibility of enforcing the provisions of this Code of Ordinances are hereby authorized pursuant to Sec. 66.0113, Wis. Stats., to issue citations for violations of this Code of Ordinances, including ordinances for which a statutory counterpart exists.

### **Sec. 1-2-2 Form of Citation.**

Each citation shall contain the information required to State law and may contain additional information. The form of the citation is hereby prescribed as found in Sec. 66.0113, Wis. Stats., as amended, which is incorporated herein by reference.

### **Sec. 1-2-3 Schedule of Deposits.**

- (a) The schedule of cash deposits for the various ordinances for which a citation may be issued are as established according to the penalty provisions of Section 1-1-7 on the deposit schedule established by the Common Council a copy of which is on file with the City Clerk-Treasurer. In addition to any deposit listed, the deposit must include a penalty assessment imposed by Sec. 757.05, Wis. Stats., and court costs as imposed by Sec. 800.10, Wis. Stats.

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- (b) The State of Wisconsin Revised Uniform State Traffic Deposit Schedule, and Alcohol Beverages, Harassment and Safety Violations Deposit Schedule, and Uniform Misdemeanor Bail Schedule, and Trespass to Land Deposit Schedule, including future amendments, revisions or modifications, is adopted for all violations of state statutes adopted by this Code, and statutory counterpart ordinances adopted by this Code of Ordinances.
- (c) Deposits shall be made in cash, money order or certified check to the Clerk of Municipal Court (if a municipal court is created), or the Clerk of Circuit Court, as directed, who/which shall provide a receipt therefor. City parking tickets shall be paid at City Hall or the City Police Department.

**Sec. 1-2-4 Issuance of Citation.**

- (a) **Law Enforcement Officers.** Any law enforcement officer may issue citations authorized under this Chapter.
- (b) **City Officials.** The following City officials may issue citations with respect to those specified ordinances which are directly related to their official responsibilities:
  - (1) Any law enforcement officer.

**Sec. 1-2-5 Procedure.**

State laws which describe the procedures to be followed before, during, and after a citation is written and State laws which cities have the option of adopting with respect to procedures to be followed before, during, and after a citation is written, including provisions which relate to an alleged violator's options and procedure on default, are hereby adopted and incorporated herein by reference.

**Sec. 1-2-6 Nonexclusivity.**

- (a) **Other Ordinance.** Adoption of this Chapter does not preclude the Common Council from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or other matter.
- (b) **Other Remedies.** The issuance of a citation hereunder shall not preclude the City 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.