

## **209.1 Public Nuisance Ordinance**

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### **SECTION I - PURPOSE**

The purpose of this ordinance is to regulate for public health and safety reasons public nuisances and certain uses and activities in the town.

### **SECTION II - AUTHORITY**

The Town Board has the specific authority under Wisconsin Statutes 29.038, 66.0407, 66.0413, 125.14, 169.01, and 175.25, and Chapter 823, and general authority under its village powers under Wisconsin Statute 60.22, to adopt this ordinance.

### **SECTION III - ADOPTION OF ORDINANCE**

This ordinance, adopted by a majority of the Town Board with a quorum present and voting and proper notice having been given, provides for the regulation of the storage, treatment, disposal, and discharge of certain junk and of other items, uses, and activities in the town.

### **SECTION IV - DEFINITIONS**

- A. Agricultural use. Any beekeeping, commercial feed lots, dairying, egg production, floriculture, fish or fur farming, forest and game management, grazing, livestock raising, orchards, plant greenhouses and nurseries, poultry raising, raising of grain, grass, mint, and seed crops, raising of fruits, nuts, and berries, sod farming, placing land in federal programs in return for payments in kind, owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836, participating in the milk production termination program under 7 USC 1446(d), and vegetable raising.
- B. Appliance. Any household or office device, instrument, utensil, apparatus, or machine that utilizes power, including, but not limited to, any stove, clothes washer or dryer, refrigerator, dish washer, freezer, water heater, water pump, furnace, television set, home entertainment device, computer or peripheral device, or other home or office electronic device.
- C. Building. Includes any building or structure or any portion of a building or structure.

- D. Debris. Any litter, junk, wood, bricks, paper, cement, concrete blocks, or any other unsightly accumulation of items or materials that may tend to depreciate property values in the adjacent or near area, create a blighted condition, present a substantial threat to public health or safety, or create a public nuisance or a public safety or health hazard, except when such items are determined by the Town Board or town committee or other agent of the town to be stored or housed out of public view and are treated and maintained so as not to be a public nuisance.
- E. Equipment. Goods used or bought for use primarily in a business, including farming and a profession.
- F. Hazardous waste. Any solid waste identified by the State of Wisconsin, Department of Natural Resources as hazardous under Wisconsin Statute 291.05(2).
- G. Junk. Scrap metal, metal alloy, wood, concrete, or synthetic or organic material or any junked, inoperative, unlicensed, or unregistered vehicle, structure, equipment, furniture, appliances, or machinery, or any part thereof. Junk includes refuse, used tires, parts of dismantled buildings, agricultural use equipment not in usable condition, parts of agricultural use equipment, and contaminated recyclable material.
- H. Junked. Dismantled for parts or scrapped.
- I. Junked vehicle parts. Parts from a junked vehicle.
- J. Junkyard. Any place that is owned, maintained, operated, or used for storing, keeping, processing, buying, or selling junk. Junkyard includes sanitary landfills, refuse dumps, garbage dumps, automobile graveyards, scrap metal processors, auto-wrecking yards, salvage yards, auto-recycling yards, used auto parts yards, and places for temporary storage of automobile bodies or parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises. Junkyard does not include places where litter, trash, and other debris are scattered along or upon a highway or temporary operations and outdoor storage of limited duration.
- K. Local zoning and land use regulation. Any applicable county, town, or extraterritorial zoning, subdivision, land division, platting, official map, building code, building permit, or other ordinance adopted pursuant to general police powers that is applicable in any manner to the use of land.
- L. Machinery. A structure or assemblage of parts that transmits forces, motion, or energy from one part to another in a predetermined way by electrical, mechanical, or chemical means. Machinery does not include a building.
- M. Motor vehicle dealer. Has the meaning given in Wisconsin Statute 218.0101(23).
- N. Motor vehicle salvage dealer. Has the meaning given in Wisconsin Statute 218.20(1r).
- O. Not registered. In reference to all-terrain vehicles as defined in Wisconsin Statute 340.01(2g), snowmobiles as defined in Wisconsin Statute 340.01(58a), or boats as defined in Wisconsin Statute 29.001(16), means those that are required to, but do not have nor bear, required current and valid State of Wisconsin licenses or registrations.
- P. Public nuisance. A thing, act, occupation, condition, or use of property that continues in the town for such time as to do any of the following:
1. Substantially annoy, injure, or endanger the comfort, health, repose, or safety of the public.
  2. In any way render the public insecure in life or in the use of property.
  3. Greatly offend the public morals or decency.

4. Unlawfully and substantially interfere with, obstruct, or attempt 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.
- Q. Recyclable material. Material that is suitable for recycling.
- R. Scrap metal processor. A fixed location at which machinery and equipment are utilized for the processing and manufacturing of iron, steel, or nonferrous metallic scrap into prepared grades and whose principal product is scrap iron, scrap steel, or nonferrous metal scrap for sale for remelting purposes.
- S. Solid waste. Any garbage, refuse, sludge, ash, paper, wood, metal, glass, cloth, plastic, lumber, concrete, food waste and other organics, boxes, barrels and other containers, tires and other like materials, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, any other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, agricultural, and community activities, and biohazard materials, but does not include solids or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Wisconsin Statute Chapter 283, source material as defined in Wisconsin Statute 254.31(1), special nuclear material as defined in Wisconsin Statute 254.31(11), or by-product material as defined in Wisconsin Statute 254.31(1).
- T. Solid waste facility. A facility for solid waste treatment, solid waste storage, or solid waste disposal, and includes commercial, industrial, municipal, state, and federal establishments or operations such as, without limitation because of enumeration, sanitary landfills, dumps, land disposal sites, incinerators, transfer stations, storage facilities, collection and transportation services, and processing, treatment, and recovery facilities. Solid waste facility includes the land where the facility is located. Solid waste facility does not include any of the following:
1. A facility for the processing of scrap iron, steel, or nonferrous metal using machinery to produce a principal product of scrap metal for sale or use for remelting purposes.
  2. A facility that uses machinery to sort, grade, compact, or bale clean wastepaper, fibers, or plastics, not mixed with other solid waste, for sale or use for recycling purposes.
  3. An auto junkyard or scrap metal salvage yard.
  4. Manure storage tanks or ponds operated in conjunction with a livestock facility
- U. Town. The Town of Berry, Dane County, Wisconsin.
- V. Town Board. The board of supervisors for the Town of Berry, Dane County, Wisconsin, and includes designees of the board authorized to act for the board, specifically including the town clerk and town chairperson.
- W. Town chairperson. The chairperson of the Town of Berry, Dane County, Wisconsin.
- X. Town clerk. The clerk of the Town of Berry, Dane County, Wisconsin.
- Y. Town committee. A committee established by the Town Board to address and aid in regulation of those uses and activities that may cause public nuisance or public health and safety threats in the town.
- Z. Unlicensed or unregistered. In reference to vehicles, mobile homes, or manufactured homes means those that are required to be licensed or registered for operation in the state, but do not have nor bear required current and valid State of Wisconsin licenses or registration.

- ZA. Vehicle. Every device in, upon, or by which any person or property is or may be transported. Vehicle includes, but is not limited to, all of the following:
1. Aircraft as defined in Wisconsin Statute 29.001(6).
  2. All-terrain vehicles as defined in Wisconsin Statute 340.01(2g).
  3. Antique vehicles as described in Wisconsin Statute 341.265.
  4. Automobiles as defined in Wisconsin Statute 340.01(4).
  5. Boats as defined in Wisconsin Statute 29.001(16).
  6. Camping trailers as defined in Wisconsin Statute 340.01(6m).
  7. Farm equipment as defined in Wisconsin Statute 100.47(1).
  8. Farm tractors as defined in Wisconsin Statute 340.01(16).
  9. Hobbyist or homemade vehicles as defined in Wisconsin Statute 341.268.
  10. Junk vehicles as defined in Wisconsin Statute 340.01(25j).
  11. Implements of husbandry as defined in Wisconsin Statute 340.01(24).
  12. Manufactured homes as defined in Wisconsin Statute 101.91(2).
  13. Mobile homes as defined in Wisconsin Statute 340.01(29).
  14. Mopeds as defined in Wisconsin Statutes 340.01(29m).
  15. Motor bicycles as defined in Wisconsin Statute 340.01(30).
  16. Motor buses as defined in Wisconsin Statute 340.01(31).
  17. Motor homes as defined in Wisconsin Statute 340.01(33m).
  18. Motor trucks as defined in Wisconsin Statute 340.01(34).
  19. Motorcycles as defined in Wisconsin Statute 340.01(32).
  20. Railroad trains as defined in Wisconsin Statute 340.01(48).
  21. Recreational vehicles as defined in Wisconsin Statute 340.01(48r).
  22. Road machinery as defined in Wisconsin Statute 340.01(52).
  23. Road tractors as defined in Wisconsin Statute 340.01(53).
  24. Salvage vehicles as defined in Wisconsin Statute 340.01(55g).
  25. School buses as defined in Wisconsin Statute 340.01(56).
  26. Semitrailers as defined in Wisconsin Statute 340.01(57).
  27. Snowmobiles as defined in Wisconsin Statute 340.01(58).
  28. Special interest vehicles as defined in Wisconsin Statute 341.266.
  29. Trailers as defined in Wisconsin Statute 340.01(71).
  30. Truck tractors as defined in Wisconsin Statute 340.01(73).
  31. Unlicensed demolition vehicles and unlicensed racing vehicles.
  32. Golf carts, garden tractors, riding lawn mowers, and other motorized tractors, motorized carts, and motorized utility vehicles that require no registration or licensure by the State of Wisconsin.
- ZB. Wild animal. Any animal of a wild nature that is normally found in the wild and that is not a farm-raised deer, a pet bird, a farm-raised game bird, or an animal that is listed as a domestic animal by rule by the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection.
- ZC. Wisconsin Statutes. The Wisconsin Statutes, including successor provisions to cited statutes.

## **SECTION V - PUBLIC HEALTH OR SAFETY**

No person may create, contrive, erect, maintain, cause, continue, install, construct, or permit to exist in the town a public nuisance associated with, causing, or likely to cause danger,

disturbance, or injury to the public health or safety. The following acts, uses, activities, things, occupations, places, or physical conditions, not properly and timely removed after written notice to remove from the Town Board to any owner or occupant of the land where the act, use, activity, thing, occupation, place, or physical condition exists, is located, or occurred, or to any person responsible for the creation, maintenance, or providing of the act, use, activity, thing, occupation, place, or physical condition, are specifically declared to be a public nuisance:

- A. Unburied animal carcass areas. Any place in the town where unburied animal carcasses are located on private or public land and the animal carcasses are not timely removed or discarded, including by timely burial in a sanitary manner, within 48 hours after receipt of written notice to remove from the Town Board. This paragraph does not apply to any animal or pet cemetery approved in writing by the town.
- B. Noxious or polluted or waste areas. Any place in the town where noxious, nauseous, unwholesome, or polluted water and waste are located on private or public land, including town roads, highways, bridges, sidewalks, alleys, or other public lands owned or controlled by the town, and those conditions are not timely removed within 7 days after receipt of written notice from the Town Board.
- C. Rat or vermin areas. Any place in the town where rats or other vermin are located or frequent on public or private land, and those conditions are not removed or destroyed within 7 days after receipt of written notice to remove from the Town Board. Vermin subject to this paragraph include rats, but are not limited to, all of the following:
  1. Rats.
  2. Feral Pigs.
  3. Feral Cats.
  4. Feral Dogs.
- D. Unauthorized human burial areas. Any place in the town where the body of a deceased person or parts of a deceased person are located and buried on private or public land in the town without written approval of the Town Board and are not timely removed within 30 days after receipt of written notice to remove from the Town Board. This paragraph does not apply to any established cemetery or burial site grounds approved, owned, and operated in accordance with Wisconsin Statutes Chapter 157.
- E. Hazardous, toxic, or solid waste facility or site areas. Any place or solid waste facility in the town where the discharge, disposal, storage, or treatment of hazardous, toxic, or solid waste occurs on private or public lands without approval and licensing or permitting of the discharge, disposal, storage, or treatment by all proper federal, state, county, and town governing authorities and full compliance with all applicable laws, rules, regulations, or ordinances of the federal, state, county, or town, and the activity or condition is not timely removed or discontinued within 30 days after receipt of written notice to remove from the Town Board. To constitute a public nuisance under this paragraph, an area, facility, or site must threaten or cause serious discomfort or serious injury to the health or cause serious inconvenience to the health or safety of a significant number of persons within the town, as determined by the Town Board.
- F. Dangerous wild animal areas. Any place in the town where live dangerous wild animals are kept, sold, or in any manner controlled or possessed on private or public land without written approval of the Town Board and the animals are not removed or destroyed within 30 days after receipt of written notice to remove from the Town Board unless written approval of the Town Board is obtained within said time. To constitute a dangerous wild

animal, under this paragraph, the species of animal must pose a threat to the safety of persons within the town, including a keeper of the animal, as determined by the Town Board. It is not necessary that the Town Board find that a specific animal is dangerous in order to find a nuisance under this paragraph. For purposes of this ordinance, dangerous wild animals include, but are not limited to, all of the following species of animals: Lions, Tigers, Cheetahs, Mountain Lions, Bears, Wolves, Chimpanzees, Orangutans, Gorillas, Pythons, Rattle Snakes, and Vipers

- G. Dangerous or dilapidated building areas. Any place in the town where a building or structure, the contents of a building or structure, or any associated electrical, heat, water, or sewer system located on public or private lands is so old, dilapidated, or out of repair as to be dangerous, unsafe, unsanitary, or otherwise unfit for human habitation, and the conditions that are dangerous, unsafe, unsanitary, or otherwise render the building unfit for human habitation are not timely removed or discontinued within 30 days of receipt of written notice to remove from the Town Board.
- H. Fire hazard areas. Any place in the town where combustible materials are unsafely located and stored on private or public lands and the materials are not timely removed or safely stored within 7 days after receipt of written notice from the Town Board.
- I. Junked vehicle and junked part areas. Any place in the town within 500 feet of the center line of any town highway in the town, or within 750 feet of the center line of any county trunk, state trunk, or federal highway where junked vehicles or junked vehicle parts are accumulated or stored or any place in the town where junked vehicles or junked vehicle parts are accumulated or stored outside of a building for a period exceeding 72 hours if upon public property, or for a period exceeding 30 days if upon private property, without obtaining a Junked Vehicle Permit from the town in accordance with the Town Junked Vehicle Ordinance adopted under Wisconsin Statute 175.25, and the town's village powers under Wisconsin Statute 60.22.
- J. Junkyard and junked vehicle, appliance, and machinery areas. Any place in the town where junked or abandoned vehicles, not otherwise subject to subsections N or P, or junked or abandoned appliances, equipment, or machinery are accumulated or stored for a period exceeding 72 hours if upon public property, or for a period exceeding 30 days if upon private property, and any place otherwise within the definition of junkyard under this ordinance that is not timely removed or discontinued within 30 days of receipt of written notice to remove from the Town Board, unless exempt under Section X of this ordinance.
- K. Unlicensed or unregistered vehicle area. Any place in the town where for a period exceeding 30 days upon private property a not registered, unlicensed, or unregistered vehicle is parked, stored, or otherwise kept outside a building without the written permission of the Town Board and is not timely permitted, removed or discontinued within 45 days of receipt of written notice to remove from the Town Board, unless exempt under Section IX of this ordinance.

## **SECTION VI - PUBLIC PEACE AND ORDER**

No person may create, contrive, erect, maintain, cause, continue, install, construct, or permit to exist in the town a public nuisance associated with, causing, or likely to cause potential danger, disturbance, or injury to the public peace and order. The following acts, uses, activities, things, occupations, places, or physical conditions, not properly and timely removed after written notice to remove from the Town Board to the owner or occupant of the land where the public nuisance

occurred or is maintained in the town, or to any persons responsible for the creation, maintenance, or permitting of such nuisance in the town, are specifically declared to be a public nuisance:

- A. Loud noise areas. Any place in the town where any unreasonably loud, discordant, and unnecessary sound conditions, including sounds from vehicles, equipment, machinery, guns, fireworks, or enclosed domestic or other animals, or from any human-created or -aided sounds, including alleged music, is located on private or public land without written approval of the Town Board and is not timely removed or discontinued within 24 hours of the written receipt of notice to remove from the Town Board.
- B. Disorderly conduct area. Any place in the town where unpermitted, abusive, indecent, profane, or boisterous sounds, unpermitted fighting, brawling, or rioting, or other unpermitted disorderly conduct conditions, are located or occur on private or public lands and these disorderly conditions are not timely removed or discontinued within 7 days of receipt of written notice to remove from the Town Board.

## **SECTION VII - PUBLIC MORALS OR DECENCY**

No person may create, continue, erect, maintain, cause, continue, install, construct, or permit to exist in the town a public nuisance associated with, causing, or likely to cause danger, disturbance, or injury to public morals or decency. The following acts, uses, activities, things, occupations, places, or physical conditions not properly and timely removed by the owner or occupant of the land after written notice to remove from the Town Board to the owner or occupant of the land where the public nuisance occurs, or to any person responsible for the creation, maintenance, or permitting of such nuisance in the town, are specifically declared to be a public nuisance as follows:

- A. Bawdyhouses. Pursuant to Wisconsin Statute 823.09, whoever erects, establishes, continues, maintains, uses, occupies, or leases any building or part of a building, erection, or place to be used for the purpose of lewdness, assignation, or prostitution, or permits the same to be so used, in the town, is guilty of a nuisance and the building, erection, or place in or upon which such lewdness, assignation, or prostitution is conducted, permitted, carried on, continued, or exists, and the furniture, fixtures, musical instruments, and contents used therewith for the same purpose, are declared a nuisance, and shall be enjoined and abated.
- B. Illegal drug houses. Pursuant to Wisconsin Statute 823.113(1), any building, land or structure that is used to facilitate the delivery, distribution, cultivation, or manufacture, as defined in Wisconsin Statutes 961.01(6), (9), and (13), respectively, of a controlled substance as defined in Wisconsin Statute 961.01(4), or a controlled substance analog as defined in Wisconsin Statute 961.01(4m), and any building or structure where those acts take place, is a public nuisance and may be proceeded against under Wisconsin Statute 823.113.
- C. Criminal gang houses. Pursuant to Wisconsin Statute 823.113(1), any building or structure that is used as a meeting place of a criminal gang, as defined in Wisconsin Statute 939.22(9), or that is used to facilitate the activities of a criminal gang, is a public nuisance and may be proceeded against under Wisconsin Statute 823.113.
- D. Gambling houses. Pursuant to Wisconsin Statute 823.20, any gambling place, as defined in Wisconsin Statute 945.01(4)(a), is a public nuisance and may be proceeded against under Wisconsin Statute Chapter 823.

- E. Illegal alcohol houses. Pursuant to Wisconsin Statute 125.14(5), any building or place where alcohol beverages or alcohol is sold, possessed, stored, brewed, bottled, manufactured, or rectified without a valid permit or license issued under Wisconsin Statute Chapter 125 or 139, or where persons are permitted to drink alcohol beverages in violation of Wisconsin Statute Chapter 125, is a public nuisance and may be closed until the activity in violation of Wisconsin Statute Chapter 125, is abated. When the activity is abated, the building or place may be used for any lawful purpose.

## **SECTION VIII - ABANDONED VEHICLES, MACHINERY, EQUIPMENT, AND APPLIANCES ON PUBLIC LANDS**

No person shall leave unattended or stored any vehicle, regardless of the vehicle's physical condition, registration, or license held, any appliance, equipment, or machinery, or parts thereof, on any public street, public road, public highway, or other public property in the town, including the road right-of-way, for such time and under such circumstances as to cause the vehicle, appliance, equipment, or machinery to reasonably appear to have been abandoned. When any vehicle, machinery, appliances, or equipment has been left unattended, parked, or stored on any public street, road, highway, or other public property, including a road right-of-way, within the town for a period of more than 72 hours, the vehicle, structure, machinery, appliances, or equipment is presumed by the town to be abandoned and a public nuisance and may be removed in accordance with Wisconsin Statute 342.40, and the owner of the vehicle is subject to the imposition of forfeitures under Section XIII of this ordinance. This section does not apply to a railroad train stopped at a railway crossing as defined in Wisconsin Statute 340.01(47).

## **SECTION IX - EXEMPTIONS AND PERMITS**

### **A. Exemptions.**

1. Any storage of junked vehicles or junked vehicle parts on private lands in the town that is in conformity with local zoning and land use regulation for which the owners, operators, or persons otherwise responsible for the storage of the vehicles or parts have been issued a permit and met the Junked Vehicle Permit requirements established by the Town Board in the Town Junked Vehicle Ordinance adopted under Wisconsin Statute 175.25, and the town's village powers under Wisconsin Statute 60.22, is exempt from the provisions of Section V, subsection N, applicable to storage of junked vehicles and junked vehicle parts. The exemption granted under this paragraph is strictly limited to the extent allowed by the permit.
2. Any operation of a junkyard on private lands in the town that is in conformity with local zoning and land use regulation for which the owners, operators, or persons otherwise responsible for the operation of the junkyard have obtained all the proper and necessary federal, state, county, town, and extraterritorial municipal approvals, permits, or licenses for the operation or have obtained licenses for operation of a junkyard on that privately owned premise under Wisconsin Statute 84.31, is exempt from the provisions of Section V, subsection O, applicable to junked vehicles, junked machinery, junked appliances, or junked equipment and parts thereof. The exemption granted under this paragraph is strictly limited to the extent allowed by the approvals, permits, or licenses.
3. Any commercial motor vehicle salvage or motor vehicle retail sales business on private lands in the town that is in conformity with local zoning and land use regulation for which the owners, operators, or persons otherwise responsible for the conduct of the

business hold a current motor vehicle salvage dealer license under Wisconsin Statute 218.205, authorizing storage uses, operations, and activities at property locations in the town or hold a current motor vehicle dealer license under Wisconsin Statute 218.0114, for salvage, sale, or storage operation and activities at a property location in the town, and are actively engaged in the town, as determined in writing by the Town Board, in the commercial motor vehicle salvage or motor vehicle retail sales business on property in the town is exempt from the provisions of Section V, subsection O, applicable to junked vehicles, junked machinery, junked appliances, or junked equipment and parts thereof. The exemption granted under this paragraph is strictly limited to the extent allowed by the applicable license.

4. Any parking, storage, or other keeping outside of buildings in the Town of Berry of two or fewer unlicensed or unregistered vehicles or two or fewer boats, snowmobiles, or all-terrain vehicles, not registered with the State of Wisconsin, on private lands owned or leased by the owner or leaseholder of the vehicles that is in conformity with local zoning and land use regulation, even if the vehicles are not stored for purposes of sale or repair, is exempt from the provisions of Section V, subsection P, relating to the keeping and storage of unlicensed or unregistered vehicles.
5. Any parking, storage, or other keeping of any agricultural use vehicles in the open on private lands in the town that is in conformity with local zoning and land use regulation by the owner or leaseholder of the land, if the vehicles are and can be used by the owner or leaseholder, without repair, for normal agricultural use in the town is exempt from the provisions of Section V, subsection O, applicable to junked vehicles, junked machinery, junked appliances, or junked equipment and parts thereof. Notwithstanding anything contained in this paragraph, storage of inoperable junk or other unrepaired agricultural use vehicles on private property of any person for more than 30 days in the open shall be deemed a violation of Section V, subsection O, unless the storage is at a commercial implement repair location where the equipment or implements can and will be timely repaired and removed from the premise.

#### B. Permits.

1. Upon proper and timely application by an owner or occupant of the premises in the town to the town clerk for a permit, and after a public hearing held by the Town Board, the Town Board may permit on public or private lands in the town, with or without conditions and restrictions, any of the following:
  - a. The storage in the open on private premises of vehicles, structures, machinery, appliances, or equipment in the town that are subject to Section V.
  - b. The maintenance of buildings, structures, or dwellings in the town that are subject to Section V.
  - c. The storage, disposal, treatment, or discharge of items, waste, and materials in the town that are subject to Section V.
2. A permit under this subsection B may be issued by the Town Board regardless of the ownership or possession rights to the vehicles, implements, machinery, structures, equipment, appliances, buildings, structures, dwellings, items, waste, or materials to be stored, maintained, disposed, treated, or discharged.
3. The applicant shall be notified of the public hearing required under paragraph 1 at least 20 days before the public hearing by the mailing by U.S. mail of a First Class notice letter to the last known address of the applicant noted on the application.

4. The permit shall be for a specific location, may be established for a term of months or years, and may be reissued upon application by the permit holder if the permit holder is in full compliance with this ordinance and with the permit conditions and restrictions as issued.
5. The conditions and restrictions, if any, in the permit established by the Town Board for any permitted storage, maintenance, disposal, treatment, or discharge shall be reasonable restrictions and conditions to protect the public health, safety, and welfare of persons within the town and to limit or negate potential public nuisances caused by the permitted storage, maintenance, disposal, treatment, or discharge. The conditions and restrictions shall be stated in writing and attached to the written permit upon issuance by the Town Board.
6. The owner or occupant of the permitted premises is responsible for compliance with the conditions and restrictions in the permit issued regardless of whether the owner or occupant of the premises has any legal or equitable interest in the vehicles, structures, machinery, appliances, or equipment subject to the permit.

## **SECTION X - ABATEMENT OF PUBLIC NUISANCES/PERMIT REVOCATION**

### **A. Inspection of Premises.**

1. Whenever a complaint is made to the Town Board, town clerk, town chair, or any appropriate town committee or agent that a public nuisance under this ordinance or a violation of a permit issued under this ordinance exists within the town, the town chairperson, town committee, or other agents of the Town Board shall promptly inspect or cause to be inspected the premises complained of and shall make a written report of its findings to the Town Board, which report shall thereafter be filed with the town clerk and kept of record in the office of the town clerk. Whenever practicable, the town chairperson, town committee, or other agents of the Town Board shall cause photographs to be made of the premises for inclusion in the written report to the Town Board.
2. If the person subject to complaint holds a current permit under this ordinance, or any Town Building Permit or Junked Vehicle Permit issued under Wisconsin Statute 175.25, and the town's village powers under Wisconsin Statute 60.22, the town chairperson, the town committee or other agents of the Town Board may immediately request the Town Board to hold a public hearing to consider suspension or revocation of the permit for refusal to comply with the permit conditions and this ordinance. The Town Board shall hold a public hearing prior to taking any action to revoke or suspend a permit. The permit holder shall be notified of the public hearing at least 20 days before the public hearing by the mailing by U.S. mail of a First Class notice letter to the last known address of the permit holder noted on the permit or permit application.
3. The Town Board may, in the alternative to revocation, suspend any issued permit for a period up to 6 months. Any revocation shall be for a period in excess of 6 months and no reapplication can be received or acted upon by the Town Board for the premises or for the owner or occupant of the premises for any activity, use, or item prohibited by or requiring a permit under this ordinance during the revocation period.
4. For any decision regarding the revocation or suspension of any permit, the Town Board shall determine and state the reason or reasons for any revocation, non-revocation, or suspension of the permit based on the lack of compliance with the permit conditions and this ordinance by the permit holder or by any employees or agents of the permit

holder. The reason or reasons for the decision shall be stated in writing and sent to the permit holder within 10 days after the decision by the Town Board by mailing by U.S. mail of a First Class letter to the last known address of the permit holder noted on the permit or permit application.

B. Owner of Premises Responsibility. Any owner or occupant of land in the town is responsible for compliance with this ordinance on the owner's or occupant's land regardless of ownership of and responsibility for the uses, activities, or things located on the land that are subject to this ordinance.

C. Summary Abatement.

1. Notice to Owner. If the Town Board determines that a public nuisance exists under this ordinance within the town on private or public land and that there is great, immediate, and substantial danger or threat to the public health or safety, the Town Board, town chairperson, town committee, or other agents of the Town Board shall serve a written order upon the person who is causing, permitting, or maintaining the public nuisance, and the owner or occupant of the premises where the public nuisance is caused, permitted, or maintained. If immediate personal service cannot be made, one copy of the written notice shall be posted on the premises in a location likely to attract the attention of the owner or occupant of the premises or the person who is causing, permitting, or maintaining the public nuisance, and one copy of the notice shall be served by mailing by U.S. mail of a First Class letter to the last known address for the owner or occupant of the premises. The order notice shall direct the owner or occupant to remove the public nuisance within 24 hours and shall state that unless the public nuisance is so timely abated, the town may cause, due to the emergency conditions, the public nuisance to be abated and shall charge the costs of abatement to the owner, occupant, or person causing, permitting, or maintaining the public nuisance.

2. Abatement by town. If the public nuisance is not abated within the time provided in the notice under paragraph 1 or if the owner, occupant, or person causing the public nuisance, if known, cannot be found, the town chairperson, the town committee, or other agents of the Town Board, with approval of the Town Board, shall cause the abatement or removal of the public nuisance by immediately seeking for the town a court order that allows for the immediate enjoinder and abatement of the public nuisance.

D. Abatement By Court Action. If the Town Board determines that a public nuisance exists on public or private premises but that the nature of the nuisance does not threaten great, immediate, and substantial danger to the public health or safety, the Town Board shall file a written report or its resolution of its findings with the town clerk who shall, after approval and filing of the report or resolution by the Town Board, take one or more of the following actions, as directed by the Town Board:

1. Issue and serve a written order to cease and desist the public nuisance upon the person causing, permitting, or maintaining the public nuisance and the owner or occupant of the premises where the public nuisance is located.

2. Issue and serve a citation for violation of this ordinance upon the person causing, permitting, or maintaining the public nuisance and the owner or occupant of the premises where the public nuisance is located.

3. Cause the town attorney to draft a formal civil complaint to be filed and served upon the alleged violators based upon an alleged violation of this ordinance or the

conditions of any permit as issued or have drafted by the town attorney to be filed and served a formal complaint for abatement of the public nuisance under Wisconsin Statute Chapter 823. In any such action, the Town of Berry shall be entitled to recover its entire actual costs of the action, including actual witness fees and reasonable attorney's fees.

- E. Other Methods Not Excluded. Nothing in this ordinance may be construed as prohibiting the injunction and abatement of public nuisances against any person, including against a permit holder that holds a current and valid permit issued by the town under this ordinance, by the town or its officials in accordance with the laws of the State of Wisconsin or this ordinance.

## **SECTION XI - COSTS OF ABATEMENT OR DISPOSAL**

In addition to any other penalty imposed by this ordinance for the erection, contrivance, creation, continuance, or maintenance of a public nuisance and violation of this ordinance, the cost of abatement of any public nuisance by the town may be collected under this ordinance or Wisconsin Statute 823.06, as a debt or expense from the owner or occupant of the real property for causing, permitting, or maintaining the public nuisance. If notice to abate the nuisance has been given to the owner or occupant previously, the cost of abatement may be assessed against the real property for services rendered and incurred by the town to enjoin or abate the public nuisance as a special charge under Wisconsin Statute 66.0627, unless paid earlier. If any vehicle, structure, equipment, implement, or appliance is abandoned or remains unclaimed in violation of this ordinance, the Town Board may proceed to declare this personal property abandoned and proceed to dispose of this personal property under Wisconsin Statute 66.0139, by public auction or other means as determined in writing by the Town Board.

## **SECTION XII - ENFORCEMENT PROVISIONS**

### **A. Penalties.**

1. 1st Offense. Any person who violates this ordinance shall, upon conviction, forfeit not less than \$20 nor more than \$500 together with the costs of prosecution, and in default of payment of such forfeiture and actual costs of prosecution, including reasonable attorney's fees, shall be imprisoned in the county jail until the forfeiture and costs are paid, but not exceeding 90 days.
2. Second and Subsequent Offenses; Penalty. Any person guilty of violating this ordinance or any person who has previously been convicted of a violation of this ordinance shall, upon conviction, forfeit not less than \$100 nor more than \$1,000 for each offense, together with the actual costs of prosecution, including reasonable attorney's fees, and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the county jail until the forfeiture and costs of prosecution are paid, but not exceeding 6 months.

- B. Separate Violations. Each day of violation of this ordinance constitutes a separate offense.

## **SECTION XIII - SEVERABILITY**

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

**SECTION XIV - EFFECTIVE DATE**

This ordinance shall take effect and be in force from and after the day after passage and publication as required by law.

Adopted this 15<sup>th</sup> day of October, 2018

Published: November 1, 2018

Posted: October 22, 2018

Brenda Kahl, Clerk/Treasurer

Anthony Varda, Chairperson

Jeff Davis, Supervisor

Michael Statz, Supervisor

Joe Kruchten, Supervisor

Duane Haag, Supervisor