

CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

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Sec. 1-1. Designation and citation of Code.

The ordinances embraced in the following chapters and sections shall constitute and be designated the "Municipal Code of the Town of Mukwonago, Wisconsin" and may be so cited.

State law reference--Authority to codify ordinances, Wis. Stats. § 66.0103.

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

In the construction of this Code, the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the Code.

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 requirement 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 "Municipal Code of the Town of Mukwonago, 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 maybe 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.

State law reference--Similar provisions, Wis. Stats. § 990.001(4).

County. The term "county" shall mean Waukesha County, Wisconsin.

Gender: singular and plural. Every word in this Code and in any ordinance importing the masculine gender may extend and be applied to the females as well as males, and every word importing the singular number only may extend and be applied to several persons or things as well as to one person or thing; provided these rules of construction shall not be applied to any provisions which shall contain any express language excluding such construction or when the subject matter or context of such provisions 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" shall mean a calendar month.

Oath. The term "oath" shall include an 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 oath 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.

State law reference--Similar provisions, Wis. Stats. § 990.01(24).

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 Mukwonago, Wisconsin."

Owner. The term "owner," as applied to a building or land shall mean the owner, any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, of the whole or part of such building or land.

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

Personal property. The term "personal property" shall mean every species of property except real property.

Preceding. The term "preceding" shall mean next before.

Premises. The term "premises," as applied to real property, shall mean land and structures.

Property. The term "property" shall mean real property, personal property and mixed property.

Real property, real estate, land, lands. The terms "real property," "real estate," "land" and "lands" include lands, 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" shall mean the State of Wisconsin.

Tenant, occupant. The terms "tenant" or "occupant," as applied to a building or land, include:

- (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" shall mean the Town of Mukwonago, Wisconsin.

Town board, board. The terms "town board" or "board" shall mean the board of supervisors of the Town of Mukwonago, Wisconsin.

Week. The term "week" shall mean a period of seven consecutive days.

Wis. Stats. § or statutes. The terms "Wis. Stats. §" or "statute" wherever used in this Code shall mean the Wisconsin Statutes and shall include all amendments thereto.

Year. The term "year" shall mean 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 thorough 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) Authorizing or approving any contract, deed or agreement.
- (3) Granting any right or franchise.
- (4) Making or approving any appropriation or budget.
- (5) Providing for salaries or other employee benefits not codified in this Code.
- (6) Levying, imposing or otherwise relating to taxes not codified in this Code.
- (7) Adopting or amending the comprehensive plan.
- (8) Dedicating, accepting or vacating any plat or subdivision.
- (9) Dedicating, establishing, naming, establishing, locating, relocating,

opening, paving, widening, repairing or vacating any street.

- (10) Establishing the grade of any street or sidewalk.
- (11) Levying or imposing any special assessment.
- (12) Annexing property into the town.
- (13) Deannexing property or excluding property from the town.
- (14) Regarding subdivisions.
- (15) Holding tank agreements.
- (16) Concerning building forms.
- (17) That is temporary, although general in effect.
- (18) That is special, although permanent in effect.
- (19) 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. Effect of repeal of ordinances.

(a) Unless specifically provided otherwise, the repeal of an ordinance does not revive any repealed ordinance.

(b) The repeal or amendment of an ordinance does not affect any action or forfeiture incurred before the repeal took effect, nor does such repeal or amendment affect any suit, prosecution or proceeding pending at the time of the amendment or repeal.

Sec. 1-7. 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. 1-8. General penalty.

Unless otherwise provided, any person convicted of a violation of any provision of this Code or any provision adopted herein by reference, shall, upon conviction be subject to:

- (1) *General penalty.*
 - a. Any person over the age of 17 years violating the provisions of this Code shall be subject to a forfeiture of not less than \$10.00 nor more than \$500.00 plus allowable statutory costs per each offense. Failure to pay any forfeiture hereunder shall subject any violator over the age of 17 years to be sentenced to the county jail and/or revocation or suspension of driving privileges.
 - b. Any person between the ages of 12 and 17 years shall be subject to a forfeiture of not less than \$10.00 nor more than \$500.00 plus allowable statutory costs per each offense, or referred to the proper authorities as provided in Wis. Stats. ch. 48. Failure to pay any forfeiture hereunder shall subject any violator to the provisions of Wis. Stats. § 48.17(2)
 - c. Any person under the age of 12 years shall be referred to the proper authorities, as provided in Wis. Stats. ch. 48.
- (2) *Nonexclusivity.*
 - a. *Other ordinances.* Adoption of this section does not preclude the town board 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 town board or any authorized office from proceedings under any other ordinance of law or by any other enforcement method to enforce any ordinance, regulation or order.
- (3) *State traffic laws.*
 - a. *State traffic laws and all other violations as set forth in chapter 70.* Any forfeiture for violation of the state statutes adopted by reference in chapter 70 shall conform to the forfeiture permitted to be impose for violation of such statutes as set forth in the Uniform Deposit and Misdemeanor Bail Schedule of the Wisconsin Judicial Conference, including any variations or increases for subsequent offenses, which schedule is adopted by reference.

b. *Local ordinance violations as set forth in chapter 70.*

1. *First violation.* Any person over the age of 17 years violating the provisions of chapter 70 shall be subject to a forfeiture of not less than \$10.00 nor more than \$500.00 plus costs per each offense. Failure to pay any forfeiture hereunder shall subject any violator over the age of 17 years to be sentenced to the county jail until such forfeiture is paid but not to exceed 90 days.
2. *Second and subsequent violations.* Any person found guilty of violating any section of chapter 70 who shall previously have been convicted of a violation of the same section 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 of prosecution are paid, but not to exceed six months.

(4) *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.

(5) *Execution against defendant's property.* Whenever any person fails to pay any forfeiture and costs of prosecution upon the order of the 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.

(6) *Enforcement procedure.* The statutory provisions of Wis. Stats. §§ 66.0109, 66.0113, 66.0114, 345.20--345.53, and ch. 199, are adopted and by reference made a part of this Code as if fully set forth herein. Any act required to be performed or prohibited by any current or future statute incorporated herein by reference is required or prohibited by this Code. Any future amendments, revisions or modifications of the statutes incorporated herein are intended to be made part of this Code in order to secure uniform statewide regulation and enforcement of traffic and municipal ordinance violations. Further the town specifically elects to use the citation method of enforcement.

(Ord. No. 85-7, § 1(25.04), 8-12-1985; Ord. No. 92-5, § 1(2.10), 7-13-1992; Ord. No. 94-12, § 1, 9-12-1994)

Sec. 1-9. Deposit schedule.

(a) *Generally.* All deposits for municipal ordinance violations authorized under this Code shall be set and adopted by separate resolution of the town board from time to time without the necessity of a formal hearing. If a deposit schedule has not been established for a specific violation, the arresting officer shall require the alleged offender to deposit not less than the maximum forfeiture permitted under this section.

(b) *Deposit procedure.*

(1) Any person arrested for a violation of chapter 70 may make a deposit of money as directed by the arresting officer at the town offices or at the office of the clerk of court or by mailing the deposit to such places. The arresting officer or the person receiving the deposit shall comply with Wis. Stats. § 343.26, or, if the deposit is mailed, the signed statement required under Wis. Stats. § 343.27 shall be mailed with the deposit. The arresting officer or the person receiving the deposit shall notify the arrested person, orally or in writing, that:

- a. If the person makes a deposit for a violation of a traffic regulation, the person need not appear in court at the time fixed in the citation, and the person will be deemed to have tendered a plea of no contest and submitted to a forfeiture and a penalty assessment, if required by Wis. Stats. § 757.05, a jail assessment, if required by Wis. Stats. § 302.46(1), a truck driver education assessment, if required by Wis. Stats. § 349.04, a railroad assessment, if required by Wis. Stats. § 346.177, 346.495 or 346.65(4r), and a crime laboratories and drug law enforcement assessment, if required by Wis. Stats. § 165.755, plus any applicable fees prescribed in Wis. Stats. ch. 814, not to exceed the amount of the deposit that the court may accept as provided Wis. Stats. § 345.37; and
- b. If the person fails to make a deposit for a violation of a traffic regulation or appear in court at the time fixed in the citation, the court may enter a default judgment finding the person guilty of the offense or issue a warrant for his arrest.

(2) a. The basic amount of the deposit for the alleged violation of a traffic regulation shall be determined in accordance with a deposit schedule which the judicial conference shall establish. Annually, the judicial conference shall review and may revise the schedule.

- b. In addition to the amount in subsection (b)(2)a of this section, the deposit shall include court costs, including any applicable Wis. Stats. ch. 814, any applicable penalty assessment, any applicable jail assessment, any applicable truck driver education assessment,

any applicable railroad crossing improvement assessment, and any applicable crime laboratories and drug law enforcement assessment.

- (3) a. The arresting officer or the person accepting the deposit may allow the alleged violator to submit a check for the amount of the deposit or make the deposit by use of a credit card, and the check or credit charge receipt shall be considered a receipt in lieu of subsection (b)(2)b of this section.
- b. The person receiving the deposit shall furnish a receipt on a serially numbered form, and shall deliver the original receipt to the alleged violator if requested, and shall state to the alleged violator that inquiry may be made at the office of the clerk of court or municipal judge regarding the disposition of the deposit.
- (4) An alleged violator in custody shall be released after making the deposit specified in this section.
- (5) Any person, other than the clerk of court or the municipal judge before whom the defendant is directed to appear, who accepts the deposit shall, before the time fixed for the appearance of the defendant, deliver the deposit and a copy of the receipt and of the citation issued to the defendant to the clerk of the court or the municipal judge. The clerk or municipal judge shall give a receipt therefor, specifying the serial number of the receipt accompanying the deposit.
- (c) *Deposit schedule.*

2.02	Applicable sections of Uniform Wisconsin Deposit and Bail Schedule for Conservation, Boating, Snowmobile, and ATV Violations.
2.04(A)	\$30.00 plus court costs and penalty assessment.
2.04(B)(1)	\$30.00 plus court costs and penalty assessment.
2.04(B)(2)	\$30.00 plus court costs and penalty assessment.

2.04(B)(3)	\$30.00 plus court costs and penalty assessment.
2.04(C)	\$30.00 plus court costs and penalty assessment.
2.04(D)	\$50.00 plus court costs and penalty assessment (except metal and glass).
2.04(D)	\$100.00 plus court costs and penalty assessment (metal and glass only).
2.04(E)	\$50.00 plus court costs and penalty assessment.
2.04(F)	\$40.00 plus court costs and penalty assessment.
2.05(C)	\$30.00 plus court costs and penalty assessment.
2.06(C)	\$30.00 plus court costs and penalty assessment.
2.07(A)	\$40.00 plus court costs and penalty assessment.
2.07(B)	\$30.00 plus court costs and penalty assessment.
2.08(A)	\$40.00 plus court costs and penalty assessment.
2.08(B)	\$40.00 plus court costs and penalty assessment.
2.08(C)	\$40.00 plus court costs and penalty assessment.

(d) *Depository.* Deposits should be made in cash, money order, or certified check to the clerk of circuit court of the county, who shall issue a receipt therefor as required by statute. If the deposit is mailed, the signed statement required by statute shall

be mailed with the deposit.

(e) *Deposit for repeat offenses.* Any person found guilty of violating this Code or any part thereof who was previously convicted of the same section within the last year shall forfeit twice the deposit plus court costs and penalty assessment.

(f) *Nonscheduled deposit.* If a deposit schedule has not been established for a specific violation, the arresting officer shall require the alleged offender to deposit not less than the maximum forfeiture permitted under this section.

(Ord. No. 85-7, § 1(25.04), 8-12-1985; Ord. No. 92-5, § 1(2.09), 7-13-1992)

Sec. 1-10. 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 herein and the clerk shall file, deposit and keep in the clerk's 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 regulations which the clerk may prescribe for their preservation. The clerk may establish fees for the sale of this Code or any part thereof.

(Ord. No. 85-7, § 1(25.03), 8-12-1985)

Sec. 1-11. 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 Municipal Code of the Town of Mukwonago, 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 Municipal Code of the Town of Mukwonago, 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. 1-12. Supplementation of Code.

(a) Supplements to this Code shall be prepared and printed whenever authorized or directed by the town. A supplement to this Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of the supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages that have become obsolete or partially obsolete. The new pages shall be so prepared that when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code that have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as necessary to do so in order to embody them into a unified code. For example, the person may:

- (1) Arrange the material into appropriate organizational units.
- (2) Supply appropriate catchlines, headings and titles for chapters, articles, divisions, subdivisions and sections to be included in the Code and make changes in any such catchlines, headings and titles or in any such catchlines, headings and titles already in the Code.
- (3) Assign appropriate numbers to chapters, articles, divisions, subdivisions and sections to be added to the Code.
- (4) Where necessary to accommodate new material, change existing numbers assigned to chapters, articles, divisions, subdivisions or sections.
- (5) Change the words "this ordinance" or similar words to "this chapter," "this article," "this division," "this subdivision," "this section" or "sections _____ to _____" (inserting section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated in the Code).
- (6) Make other nonsubstantive changes necessary to preserve the original meaning of the ordinances inserted in the Code.

Sec. 1-13. Severability.

The sections, subsections, paragraphs, sentences, clauses and phrases of this Code and all provisions adopted by reference in this Code are severable so that if any section,

subsection, paragraph, sentence, clause and phrase of this Code or of any provision adopted by reference in this Code is for any reason declared unconstitutional or invalid by a valid judgement of a court of competent jurisdiction, such judgement shall not affect the validity of any other section, subsection, paragraph, sentence, clause and phrase of this Code or of any provision adopted by reference in this Code. The town board declares that they would have passed this Code and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional.

(Ord. No. 85-7, § 1(25.02(2)), 8-12-1985)

State law reference-- Severability generally, Wis. Stats. § 990.001(11).

Sec. 1-14. Conflict.

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.

(Ord. No. 85-7, § 1(25.02(1)), 8-12-1985)

Sec. 1-15. 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.

State law references-- Collection of forfeitures generally, Wis. Stats. § 778.10.