



City of West Allis

Ordinance: O-2017-0038

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number: O-2017-0038

Sponsor(s): Ald. Reinke

Final Action:

SEP 19 2017

Ordinance to Create Section 7.18 of the West Allis Revised Municipal Code Relating to Human Health Hazards.

The Common Council of the City of West Allis do ordain as follows:

PART I. Section 7.18 of the Revised Municipal Code of the City of West Allis is hereby created to read as follows:

7.18 HUMAN HEALTH HAZARDS.

(1) Adoption of State Statutes. Except as otherwise provided herein, the provisions of Wisconsin Statutes Sections 254.55 through 254.595, as amended, relating to the regulation of human health hazards are adopted by reference.

(2) Definitions.

(a) "Groundwater" means all water found beneath the surface of the city of West Allis located in sand, gravel, lime, rock or sandstone, geological formations, or any combinations of these formations.

(b) "Human Health Hazard" means a means a substance, activity or condition that is known to have the potential to cause acute or chronic illness, infectious disease, or death if exposure to the substance, activity or condition is not abated.

(c) "Imminent Health Hazard" means a condition that exists or has the potential to exist which should, in the opinion of the Health Commissioner or designee, be abated or corrected immediately, or at least within a 24-hour period, to prevent possible severe damage to human health and/or the environment.

(d) "Person" means any individual, firm, corporation, partnership, or other organization.

(e) "Pollution" means the contaminating or rendering unclean or impure the air, land, or waters of the City of West Allis, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.

(f) "Stagnant water" means any water that is not continuously in movement by natural or mechanical means that remains in its same location for more than three (3) days.

(g) "Wastewater" means water contaminated by waste materials, urine, feces, toilet paper, other human bodily

fluids, water from washing or cleaning, or any other material intended to be deposited in a receptor of human waste, industrial waste, sludge, sewage or any combination thereof.

(3) Prohibition. No person shall create, construct, cause, continue, maintain, or permit any human health hazard or imminent human health hazard within the City of West Allis.

(4) Responsibility. The property owner is responsible for maintaining the property in a hazard-free manner and for the abatement of any human health hazard or imminent human health hazard that has been determined to exist on the property.

(5) Human Health Hazards Enumerated. The following acts, omissions, places, conditions, and things are specifically declared to be human health hazards, but such enumeration shall not be construed to exclude other human health hazards:

(a) Air Pollution. The escape of excessive smoke, soot, cinders, acids, fumes, gases, fly ash, industrial dust, or other atmosphere pollutants that endanger human health or create non-compliance with applicable state or federal regulations.

(b) Waste. Accumulations of decayed animal or vegetable matter, trash, rubbish, garbage, or bird, animal, or human fecal matter that is not stored in a rodent, animal, and insect-proof container.

(c) Holes and Openings. Any hole or opening caused by an improperly abandoned cistern, septic tank, or well; or any improperly abandoned, barricaded, or covered up excavation.

(d) Unburied Carcasses. Carcasses of animals, birds, or fish not intended for human consumption or food, which are not buried or otherwise disposed of in a sanitary manner within forty-eight (48) hours after death.

(e) Breeding Places. Stagnant water, rotting lumber, bedding, packing material, scrap metal, or any material or substance in which flies, mosquitos, or disease carrying insects, rats or other vermin can breed, live, nest or seek shelter.

(f) Solid Waste. Any solid waste, as defined in Wisconsin Statutes Section 289.01(33), which is stored or disposed of in non-compliance with Chapter NR500 of the Wisconsin Administrative Code.

(g) Toxic and Hazardous Materials. Any chemical and/or biological material that is stored, used, or disposed of in such quantity or manner that is or has the potential to create a health hazard.

(h) Groundwater Pollution. Addition of any chemical and/or biological substance that would cause groundwater to be unpalatable or unfit for human consumption. These substances include but are not limited to the chemical and/or biological substances listed in Chapter NR809 of the Administrative Code titled "Safe Drinking Water."

(i) Private Water Supply. Any private well that is constructed, abandoned or used and/or any pump installed in non-compliance with Chapter NR812 of the Wisconsin Administrative Code.

(j) Noxious Odors. Any use of property, substance or device that emits or causes any foul, offensive, noxious,

or disagreeable odor deemed repulsive to the physical senses of ordinary persons or to the public as a whole.

(k) Wastewater. The presence of wastewater or sewage effluent from buildings on any exposed ground surface, caused by a damaged, malfunctioning, improperly constructed or inadequately maintained private sewage system or private sewage lateral; also any wastewater or sewage effluent that is not handled and disposed of in compliance with all applicable county and state codes.

(l) Nonfunctioning and maintenance of building fixtures, including nonfunctioning water supply systems, toilets, urinals, lavatories or other fixtures considered necessary to ensure a sanitary condition in a public building; any public restroom which is soiled by human waste or other waste and maintained in a filthy and/or unclean manner.

(m) Unhealthy or unsanitary condition. Any condition or situation which renders a structure or any part thereof unsanitary, unhealthy, and unfit for human habitation, occupancy, or use or renders any property unsanitary or unhealthy.

(n) Surface water pollution. The pollution of any stream, lake or other body of surface water within the City of West Allis that creates noncompliance with Chapters NR 102 and NR 103 of the Wisconsin Administrative Code.

(6) Inspection. The Health Commissioner or designee may inspect or cause to be inspected any property where a human health hazard or immediate human health hazard is suspected to exist.

(7) Enforcement. If the Health Commissioner or designee finds a human health hazard, the hazard shall be ordered abated or removed within a reasonable time period. Notice of the abatement order shall be mailed to the property owner and occupant by certified mail, return receipt requested. Such notice shall be in writing and include a description of the real estate involved, a statement of violations, the corrective actions required, and the penalty for failure to comply with the order. Additionally, the Health Commissioner may post the abatement order on the affected property.

(8) Designation of Unfit Building. If the Health Commissioner or designee discovers an unfit dwelling, dwelling unit, building, or section of a building, the Health Commissioner or designee shall designate it as a human health hazard and placard it with a sign, at each entrance or exit to it, stating that it may not be used for human habitation, occupancy, or use. The following conditions shall constitute grounds for declaring a dwelling, dwelling unit, building or section of a building unfit, but such enumeration shall not be construed to exclude other conditions:

(a) One which is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin infested that it creates a serious hazard to the health or safety of the occupants or of the public.

(b) One which lacks sanitation facilities adequate to protect the health or safety of the occupants or of the public.

(c) One which, because of its general condition or location, is unsanitary or otherwise dangerous to the health or safety of the occupants or of the public.

(d) One which has been implicated as the source of a confirmed case of asbestosis.

(e) One which has been confirmed to be a lead hazard, as defined in Wisconsin Statutes Section 254.11(8g); is the residence of an individual with a confirmed case of lead poisoning, as defined in Wisconsin Statutes Section 254.11(9); and is unlikely to have the lead hazard be adequately and safely temporarily contained, in the opinion of the inspector, until lead hazard abatement occurs.

(f) One which lacks potable water or a properly functioning septic system or well or an adequate and functioning heating system.

(9) Occupation of Unfit Building.

(a) No person shall continue to occupy, rent, or lease a dwelling, dwelling unit, building, or section of a building for human habitation or occupancy which are declared unfit for human habitation or occupancy by the Health Commissioner or designee.

(b) Any dwelling, dwelling unit, building, or section of a building condemned as unfit for human habitation or occupancy, and so designated and marked by the Health Commissioner or designee, shall be vacated within a reasonable time, as specified by the Health Commissioner or designee.

(c) No dwelling, dwelling unit, building, or section of a building which has been condemned and marked as unfit for human habitation or occupancy shall again be used for human habitation until written approval is secured from and such placard is removed by the Health Commissioner or designee. The Health Commissioner or designee shall remove such placard whenever the defect or defects upon which the condemnation and placarding were based have been eliminated.

(d) No person shall deface or remove the Health Commissioner's placard from any dwelling, dwelling unit, building, or section of a building which has been condemned as unfit for human habitation or occupancy.

(e) No person shall enter or remain in a dwelling, dwelling unit, building, or section of a building that has been condemned and placarded as unfit for human habitation without the written permission of the Health Commissioner or designee. Any person granted permission shall comply with the permission conditions.

(10) Abatement. If the owner or occupant fails to comply in the time specified in the order, the Health Commissioner or designee or a person working on the City's behalf may enter the property to abate or remove the human health hazard pursuant to the procedures of this Section or any applicable state statutes. The City shall recover the expenses incurred thereby from the owner or occupant of the premises or from the person who has caused or permitted the nuisance by billing the owner, occupant, and/or person who has caused or permitted the nuisance and placing the expenses on the property tax roll if said expenses are not paid within thirty (30) days, pursuant to Wisconsin Statutes Section 66.0627.

(11) Appeal of Order.

(a) For the purposes of this section, pursuant to Wisconsin Statute Section 68.16, the City of West Allis is

specifically electing not to be governed by Chapter 68 of the Wisconsin Statutes.

(b) The owner or occupant of the property determined to be or containing a human health hazard may request a hearing before the Board of Health within seven (7) days of receiving the mailed abatement order. Any request shall be written, shall be filed at the West Allis Health Department, shall explain why the property is not or does not contain a human health hazard, and shall include any evidence that the property owner or occupant wishes to submit in support of the request. Upon receipt of the hearing request, the matter shall be placed on the agenda for the Board of Health to review within thirty (30) days. The appellant shall receive notice of the date, time, and place of the Board of Health meeting by first-class mail at least ten (10) days prior to the date of the meeting. The notice shall also include a notification to the appellant of an opportunity to be heard, respond to, and challenge the abatement order; present and cross examine witnesses under oath; and be represented by counsel of the appellant's choice and at the appellant's expense.

(c) If the appellant fails to appear at the Board of Health meeting, or if the appellant appears at the Board of Health meeting but no longer wishes to pursue the appeal, the appeal shall be dismissed, and the Health Commissioner or designee may enforce the abatement order. If the appellant appears at the Board of Health meeting and wishes to contest the abatement order, an evidentiary hearing shall be scheduled.

(d) If the matter proceeds to hearing before the Board, the following procedures shall apply:

1. The Health Commissioner or designee shall first present evidence in support of the abatement order.
2. After the Health Commissioner or designee rests, the appellant may present evidence in opposition of the abatement order.
3. The Health Commissioner or designee and appellant may subpoena and present witnesses. All witnesses shall testify under oath or affirmation and shall be subject to cross examination.
4. The Health Commissioner or designee and appellant shall each be limited to one (1) hour for testimony unless the Chair, subject to approval of the Board, extends the time to assure a full and fair presentation.
5. Questions by Board members or the advising City Attorney and answers to such questions shall not be counted against the time limitations.
6. At the close of testimony, the Health Commissioner or designee and appellant shall be given a reasonable time to make arguments upon the evidence produced at hearing.

(e) At all stages of the proceedings, the following procedures shall apply:

1. The appellant shall be entitled to appear in person or by an attorney of his/her own expense.
2. The Health Commissioner or designee may be represented by a prosecuting City Attorney.
3. The Board shall be, when required, advised by an advisory City Attorney who shall not be the same individual as the prosecuting City Attorney.
4. The Chair of the Board of Health shall be the presiding officer. The Chair shall direct that oaths and affirmations be administered and subpoenas issued upon request of either side. The Chair shall ensure that an

orderly hearing is conducted in accordance with the provisions of this section. The Chair shall rule on objections to the admissibility of evidence. Any ruling of the Chair shall be final unless appealed to the Board and a majority vote of those members present and voting reverses such ruling.

5. An audio recording or stenographic record shall be made of all proceedings at the hearing. Any interested party may obtain a copy of the recording or transcript at his or her own expense.

(f) At the close of the hearing, the Board shall deliberate and reach a decision whether to uphold the determination that the property is a human health hazard. The appellant shall be notified in writing of the Board's determination. If the Board upholds the determination that the property is a human health hazard, the property owner or occupant shall comply with the abatement order. If the appellant further contests the determination, the appellant may seek review of the decision with the circuit court within thirty (30) days of the mailing date of the written determination.

(g) If a property owner or occupant does not file a timely written request for a hearing with the Board of Health, the owner or occupant waives the right to assert that the property did not meet the criteria for abatement under this section.

(12) Imminent Human Health Hazard Procedure.

(a) If the Health Commissioner or designee determines that an imminent human health hazard exists within the City and that great and immediate danger exists to the public health and safety, the Commissioner or designee may, without notice or hearing, issue an order reciting the existence of an imminent human health hazard constituting imminent danger to the public and requiring immediate action be taken, as s/he deems necessary, to abate the hazard. Notwithstanding any other provisions of this subsection, the order shall be effective immediately. Any person to whom such order is directed shall comply with the order immediately. Such order shall be posted on the property and mailed, by registered mail with return receipt requested, to the owner and/or occupant. In lieu of mailing, the owner and/or occupant may be personally served with the order.

(b) Whenever the owner and/or occupant shall refuse or neglect to remove or abate the condition meeting the criteria set forth in subsection (12)(a), above, and described in the order, the Commissioner or designee shall, in his/her discretion, or a person working on the City's behalf shall enter upon the premises and cause the nuisance to be removed or abated. The City shall recover the expenses incurred thereby from the owner or occupant of the premises or from the person who has caused or permitted the nuisance by billing the owner, occupant or person who has caused or permitted the nuisance and placing the expenses on the property tax roll if said expenses are not paid within thirty (30) days, pursuant to Wisconsin Statutes Section 66.0627.

(13) Additional Enforcement. In addition to the penalties listed within this section, the City Attorney or designee or the Health Commissioner or designee may pursue a nuisance enforcement action against a person creating, maintaining, or permitting an imminent human health hazard or human health hazard under Chapter 18 of this Code or Wisconsin Statutes Chapter 821; a human health hazard action under Wisconsin Statutes Section 254.595; or any other legal or equitable action allowed by law.

(14) Right of Health Commissioner or Designee to Inspect and Suspend Work. To ensure that abatement or correction is being properly remedied and performed in a safe manner or for any other reason, the Health Commissioner or designee may inspect the property at reasonable times and order work or abatement procedures be suspended, if necessary, to investigate or review the condition or abatement progress.

(15) Severability. If any part of this section is found to be unconstitutional or otherwise invalid, the validity of the remaining parts shall not be affected.

PART II. All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby repealed.

PART III. This ordinance shall take effect and be in force from and after its passage and publication.

ATTO-Create Sec7.18-HumanHealthHazards

PASSED SEP 19 2017

APPROVED 9/25/17

Monica Schultz

Monica Schultz, City Clerk

Dan Devine

Dan Devine, Mayor