

CHAPTER 13
PUBLIC NUISANCES

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13.01 PUBLIC NUISANCES PROHIBITED. No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the City.

13.02 PUBLIC NUISANCE DEFINED. A public nuisance is a thing, act, occupation, condition, or use of property which shall continue for such length of time as to:

- (a) Substantially annoy, injure or endanger the comfort, health, repose, or safety of the public;
- (b) In any way render the public insecure in life or in the use of property;
- (c) Greatly offend the public morals or decency;
- (d) Unlawfully and substantially interfere with, obstruct or tend 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.

13.03 PUBLIC NUISANCES AFFECTING HEALTH. The following acts, omissions, places, conditions, and things are hereby specifically declared to be public health nuisances, but such enumeration shall not be construed to exclude other health nuisances coming within the definitions of sec. 13.02 above:

(1) ADULTERATED FOOD. All decayed, harmfully adulterated, or unwholesome food or drink sold or offered for sale to the public.

(2) UNBURIED CARCASSES. Carcasses of animals, birds, or fowl not intended for human consumption or foods which are not buried or otherwise disposed of in a sanitary manner within 24 hours after death.

(3) BREEDING PLACES FOR VERMIN, ETC. Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal, or any material whatsoever in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed.

(4) STAGNANT WATER. All stagnant water in which mosquitoes, flies or other insects can multiply.

(5) GARBAGE CANS AND PLASTIC BAGS. Garbage cans and plastic bags which are not fly tight.

(6) ANIMALS. All animals running at large.

(7) SMOKE AND FUMES. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, or industrial dust within the City limits or within one mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property.

(8) NOXIOUS WEEDS. (Ord. #01-2010) All noxious weeds and other rank growth of vegetation. All weeds and grass shall be kept cut to a height not to exceed 8 inches.

(9) WATER POLLUTION. The pollution of any public well or cistern, stream, lake, canal, or other body of water by sewage, creamery or industrial wastes or other substances.

(10) NOXIOUS ODORS, ETC. Any use of property, substances or things within the City emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, gases, effluvia or stench extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the City.

(11) STREET POLLUTION. Any use of property which shall cause any nauseous or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk, or public place within the City.

13.045 PUBLIC NUISANCES RELATING TO WEED AND GRASS CONTROL

(Ord #01-2019)(1) PUBLIC NUISANCE DECLARED. The Common Council finds that lawns, grasses, and noxious weeds on non-agricultural lots or parcels of land, as classified under the City's Municipal Zoning Code Chapter 9, within City of Darlington, which exceed eight inches in length, adversely affect the public health and safety in that they tend to emit pollen and other discomforting bit of plants, constitute a fire hazard and safety hazard in that debris can be hidden in the grass, interferes with the public convenience, and adversely affects property value of other land within the City. For that reason, any non-agricultural or non-woodland lawn, grass, or weed on a lot or other parcel of land which exceeds eight inches in length is declared to be a public nuisance.

(2) MOWING REQUIRED. Every property owner shall mow, or cause to be mowed, all grasses or weeds growing on the owners' property and abutting parkway with the City on land not solely used for agricultural or woodland purposes to a height not to exceed eight inches.

(3) GRASS CLIPPINGS BLOWN INTO STREET PROHIBITED. No person shall permit grass clippings from lawn mowing and other sources to be blown into or remain upon sidewalks, street pavement, gutters

of any public street or upon any public property or upon any property of another, without the express permission of the owner or occupant thereof.

(4) ENFORCEMENT. The Weed Commissioner or other designee of the City shall enforce the requirements of this subsection, and if any person is found to be in violation of any of the provisions of this subsection, the Weed Commissioner or other designee of the City, shall after five days' written notice to the owner of the premises, which notice shall only be sent once per year, cause the grass and weeds on the premises to be mowed. Subsequent violations will be addressed by the City without notice. The Weed Commissioner or other designee of the City shall report the cost of mowing the grass and weeds to the City Clerk/Treasurer including administrative, labor, overhead, bookkeeping, mileage, and incidentals, and the City shall recover such costs by charging the property owner and shall add any unpaid amounts to the property owner's property tax bill as a special tax.

(5) NO LIMITATION ON OTHER ENFORCEMENT. Action by the Weed Commissioner or other designee of the City under this Subsection shall be in addition to the prosecution and enforcement authority granted in the Municipal Code or by State Law, and shall not bar any prosecution for violations of ordinances or State Law or any other lawful remedy; nor shall prosecution or other legal action be a bar against action under this subsection.

(6) CONFLICTS WITH OTHER CODE PROVISIONS. In the event of any conflict between this Subsection and any other provisions of this Municipal Code, this Subsection shall control.

13.04 PUBLIC NUISANCES OFFENDING MORALS AND DECENCY. The following acts, omissions, places, conditions, and things are hereby specifically declared to be public nuisances offending public morals and decency, but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of sec. 13.02 of this chapter:

(1) DISORDERLY HOUSES. All disorderly houses, bawdy houses, houses of ill fame, gambling houses, and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual intercourse, or gambling.

(2) GAMBLING DEVICES. All gambling devices and slot machines.

(3) UNLICENSED SALE OF LIQUOR AND BEER. All places where intoxicating liquor or fermented malt beverages are sold,

possessed, stored, brewed, bottled, manufactured, or rectified without a permit or license as provided for by this Code.

(4) CONTINUOUS VIOLATION OF CITY ORDINANCES. Any place or premises within the City where City ordinances or state laws relating to public health, safety, peace, morals, or welfare are openly, continuously, repeatedly, and intentionally violated.

(5) ILLEGAL DRINKING. Except as provided in sub. (6), the drinking of any intoxicating liquors as defined in §125.02(8), Wis. Stats., or any fermented malt beverages as defined in §125.02(6)(j), Wis. Stats., or the carrying of any open container which contains an intoxicating liquor or fermented malt beverage, is prohibited in the following places:

- (a) On private property without the owner's consent.
- (b) On any street, roadway, alley, parking lot, or sidewalk.
- (c) On any public property in the City, except where permitted by Chapter 19.

(6) LICENSE OR PERMIT REQUIRED FOR PREMISES PERMITTING CONSUMPTION OF FERMENTED MALT BEVERAGES. The prohibition relating to the drinking of fermented malt beverages in any public park, street, public place, or other public area within the City as provided in sub. (5) shall not apply to organizations and groups which have been issued a license or permit as follows:

- (a) Any organization enumerated in §64.054(8)(b), Wis. Stats., may be issued a Class "B" fermented malt beverage picnic license pursuant to par. 12.02(3)(a) of this Code.
- (b) Permits may be granted at no cost by the Clerk-Treasurer, upon approval by the Chief of Police of the application, for a picnic or similar gathering of a bonafide fraternal, patriotic, religious, philanthropic, veterans, recreational, social, or other similar groups that have been in existence for at least one year. Any such organization requesting such permit shall furnish proof of their Wisconsin Sales Tax Permit and current registration with the Secretary of State, when applicable.
- (c) Permits may be granted at no cost by the Clerk-Treasurer to groups of people related by marriage, blood, or adoption.
- (d) Reservations may be made by application of any of the above organizations or groups for areas in the City Park System as needed for a specified date and time, when the

date, time, and location is not in conflict with regularly scheduled events or events scheduled prior thereto.

13.05 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY. The following acts, omissions, places, conditions, and things are hereby declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the definition of sec. 13.02 of this chapter:

(1) SIGNS, BILLBOARDS, ETC. All signs and billboards, awnings, and other similar structures over or near streets, sidewalks, public grounds, or places frequented by the public, so situated or constructed as to endanger the public safety.

(2) ILLEGAL BUILDINGS. All buildings erected, repaired, or altered in violation of the provisions of this Code relating to materials and manner of construction of buildings and structures within the City.

(3) UNAUTHORIZED TRAFFIC SIGNS. All unauthorized signs, signals, markings, or devices placed or maintained upon or in view of any public highway or recreational trail crossing which purport to be or may be mistaken as an official traffic control device, recreational trail sign or signal or which because of its color, location, brilliance or manner of operation interferes with the effectiveness of any device, sign or signal.

(4) OBSTRUCTION OF INTERSECTIONS. All trees, hedges, billboards, or other obstructions which prevent persons driving vehicles on public streets, alleys, or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk. (See also Ch. 19.10(7) of this code.)

(5) DANGEROUS TREES. All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.

(6) FIREWORKS. All use or display of fireworks except as provided by the laws of the State of Wisconsin and this Code.

(7) DILAPIDATED BUILDINGS. All buildings or structures so old, dilapidated, or out of repair as to be dangerous, unsafe, unsanitary, or otherwise unfit for human use.

(8) WIRES OVER STREETS. All wires over streets, alleys, or public grounds which are strung less than 15 feet above the surface thereof.

(9) NOISY ANIMALS OR FOWL. The keeping or harboring of any animal or fowl which by frequent or habitual howling, yelping, barking, crowing, or making of other noises shall greatly annoy or disturb a neighborhood or any considerable number of persons within the City.

(10) OBSTRUCTIONS OF STREETS: EXCAVATIONS. All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by this Code or which, although made in accordance with such Code, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished, or do not conform to the permit.

(11) UNLAWFUL ASSEMBLY. Any unauthorized or unlawful use of property abutting on a public street, alley, or sidewalk or of a public street, alley, or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.

(12) SNOW AND ICE REMOVAL. All ice not removed from public sidewalks or sprinkled with a material which reduces the risk to pedestrians of slipping and falling and all snow not removed from public sidewalks within 24 hours after it has ceased to fall thereon. (See also sec. 8.07 of this Code.)

(13) REFRIGERATORS. All abandoned refrigerators or iceboxes from which the doors and other covers have not been removed or which are not equipped with a device for opening from the inside.

(14) FLAMMABLE LIQUIDS VIOLATIONS. Repeated or continuous violations of this Code or the laws of the State of Wisconsin relating to the storage of flammable liquids.

13.06 DUTCH ELM DISEASE. (1) PUBLIC NUISANCES DECLARED. The following are hereby declared to be public nuisances wherever they may be found within the City.

(a) Any living or standing elm tree or part thereof infected with the Dutch Elm disease fungus (*Ceratocystis ulmi* [Buisman] Moreau) which harbors any of the elm bark beetles *Scolytus Multistriatus* (Eichh.) or *Hylurgopinus rufipes* (Marsh.).

(b) Any dead elm tree or part thereof, including logs, branches, stumps, firewood, or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying insecticide.

(2) NUISANCES PROHIBITED. No person shall permit any public nuisance as defined in sub. (1) to remain on any premises owned or controlled by him within the City.

(3) INSPECTION. (a) The Director of Public Works shall inspect or cause to be inspected all premises and places within the City at least twice each year to determine whether any public nuisance as defined in sub. (1) exists thereon, and shall also inspect or cause to be inspected any elm tree reported or suspected to be infected with the Dutch Elm disease fungus or any elm bark-bearing material reported or suspected to be infected with the elm bark beetle.

(b) The Director of Public Works may enter upon private premises at all reasonable times for the purpose of carrying out any of the provisions of this section.

(4) ABATEMENT OF DUTCH ELM DISEASE NUISANCES. (a) Whenever the Director of Public Works shall find, with reasonable certainty on examination or inspection, that any public nuisance as defined in this section exists within the City, he shall cause it to be sprayed, removed, burned, or otherwise abated in such manner as to destroy or prevent as fully as possible the spread of Dutch Elm disease fungus or the insect pests or vectors known to carry such disease.

(b) Before abating any such nuisance on private premises or in any terrace strip between the lot line and the curb, the Director of Public Works shall proceed as follows:

1. If the Director of Public Works shall determine that danger to other elm trees from said nuisance is not imminent because of elm dormancy, he shall make a written report of his findings to the Council who shall proceed as provided in §27.09 (4), Wis. Stats.

2. If the Director of Public Works shall determine that danger to other elm trees within the City is imminent, he shall notify the owner or abutting owner of the property on which such nuisance is found in writing, if he can be found, otherwise by publication in a newspaper of general circulation in the City that the nuisance must be abated as directed in the notice within a specified time, which shall not be less than 10 days from the date of such notice unless the Director of Public Works shall find that immediate action is necessary to prevent the spread of infection. If the owner fails to comply with the notice within the time limited, the Director of Public Works shall cause the abatement thereof.

(c) No damage shall be awarded to the owner for destruction of any elm tree, elmwood, or elm material or any part thereof pursuant to this section.

(5) SPRAYING OF ELM TREES. (a) Whenever the Director of Public Works shall determine that any elm tree or elm material within or near the City is infected with Dutch Elm disease fungus, he may cause to be sprayed all high-value elm trees within a 1,000-foot radius thereof with an effective elm bark beetle-destroying concentrate, provided such spraying shall be performed prior to July 15 or after October 15 of any year.

(b) Before causing the spraying of any elm tree on private property in accordance with this section, the Director of Public Works shall notify the owner as provided in sub. (4) (b)2.

(6) ASSESSMENT OF COSTS OF ABATEMENT AND SPRAYING. (a) The entire cost of abating any public nuisance as defined in sub. (2) or of spraying any elm tree in accordance with sub. (4) may be charged to and assessed against the parcel or lot abutting on the street, alley, boulevard, or parkway upon or in which such tree is located or the parcel or lot upon which such tree stands in accordance with §66.60(16), Wis. Stats. The cost of abating any nuisance or spraying any elm tree or part thereof which is located in or upon any park or public grounds shall be borne by the City.

(b) The Director of Public Works shall keep strict account of the costs of work done under this section and shall report monthly to the Clerk-Treasurer all work done for which assessments are to be made, stating and certifying the description of the land, lots, parts of lots or parcels of land and the amounts chargeable to each. The Clerk-Treasurer shall include in her report to the Council the aggregate amounts chargeable to each lot or parcel so reported, and such amounts shall be levied and assessed against such parcels or lots in the same manner as other special taxes.

(7) TRANSPORTING OF ELMWOOD PROHIBITED. No person shall transport within the City any bark-bearing elmwood or material without first securing the written permission of the Director of Public Works.

13.07 COTTONWOOD AND BOX ELDER TREES PROHIBITED. No person shall plant or maintain within the City any female tree of the species *Populus Delotiodes*, commonly called the Cottonwood, or any tree commonly called the seed-bearing Box Elder or *Acer Negundo*, which may now or hereafter become infested with box elder bugs, and such trees are hereby declared a nuisance. Any person having any such trees on his premises shall cause the same to be removed. If any owner shall fail to remove any such tree within 30 days after receiving written notice from the Director of Public Works, the Director shall cause the removal of such tree and report the

full cost thereof to the Clerk-Treasurer who shall place such charge upon the next tax roll as a special charge against the premises.

13.08 JUNK, CERTAIN VEHICLES, RECREATIONAL EQUIPMENT, AND FIREWOOD. (1) PUBLIC NUISANCES DECLARED. The following are hereby declared to be public nuisances wherever they may be found within the City:

(a) Any motor vehicle, truck body, tractor, or trailer as enumerated in sub. (3) and (4) below and defined in sub. (2) (a), (b) and (c) below.

(b) Any junk stored contrary to sub. (5) below.

(c) Any recreational equipment stored contrary to sub. (6) below.

(d) Any firewood used or stored contrary to sub. (7) below.

(2) DEFINITIONS. The following words, phrases, and terms used in this section shall be interpreted as follows:

(a) Disassembled, Inoperable, Junked, or Wrecked Motor Vehicles, Truck Bodies, Tractors, Trailers. Motor vehicles, truck bodies, tractors, or trailers in such state of physical or mechanical ruin as to be incapable of propulsion or being operated upon the public streets or highways.

(b) Unlicensed Motor Vehicles, Truck Bodies, Tractors, or Trailers. Motor vehicles, truck bodies, tractors, or trailers which do not bear lawful current license plates.

(c) Motor Vehicle. As defined in §340.01(35), Wis. Stats.

(d) Junk. Worn out or discarded material of little or no value including, but not limited to, household appliances or parts thereof, machinery and equipment or parts thereof, vehicles or parts thereof, tools, discarded building materials, or any other unsightly debris, the accumulation of which has an adverse effect upon neighborhood or City property values, health, safety or general welfare.

(e) Recreation Equipment. Boats, canoes, trailers, mobile homes, campers, off-highway vehicles, and snowmobiles.

(3) STORAGE OF INOPERABLE VEHICLES, ETC. (a) Restricted. No person shall accumulate, store or allow any disassembled, inoperable, junked, or wrecked motor vehicles, truck bodies,

tractors, or trailers in the open upon any public or private property in the City for a period exceeding 10 days.

(b) Exceptions. 1. Any business engaged in automotive sales or repair located in a properly zoned district may retain disassembled or wrecked vehicles in the open for a period not to exceed 30 days, after which such vehicles shall be removed.

2. Junkyards licensed under sec. 11.09 of this Code.

(4) STORAGE OF UNLICENSED VEHICLES, ETC. (a) Restricted. No person shall accumulate, store or allow any unlicensed motor vehicle, truck body, tractor, or trailer in the open upon any public or private property in the City for a period exceeding 10 days.

(b) Exceptions. 1. Any business engaged in the sale, repair, or storage of such unlicensed vehicles in a properly zoned district.

2. Garden tractors and mowers may be stored in the rear yard not less than 10 feet from any property line.

(5) STORAGE OF JUNK PROHIBITED. No person, except a junk dealer licensed under sec. 11.09 of this Code, shall accumulate, store or allow any junk outside of any building on any public or private real estate located in the City.

(6) STORAGE OF RECREATIONAL EQUIPMENT REGULATED. No person shall store any recreational equipment on any street right of way for a period of more than 48 hours or within the front setback except recreational vehicles may be parked in the driveway within the front setback provided that the sidewalk is not blocked. (Ord. #01-2010)

(7) STORAGE OF FIREWOOD. (a) Regulated. No person shall store firewood on any residential premises except for use on the premises. No firewood pile may be located within the front setback or within 5 feet of any side or rear property line.

(b) Exception. (Ord. #01-2010) Firewood may be neatly stacked on or near the lot line upon obtaining the written consent of the adjoining property owner. Such consent shall be filed with the Building Inspector. Firewood may be neatly stacked within the front setback between August 1 and June 1 of each year.

(8) REPEALED. (Ord. #01-2010)

(9) **ISSUANCE OF CITATION; ACTION TO ABATE.** Whenever the Building Inspector or the Police Department shall find any such vehicle, junk, or recreational equipment, as defined in sub. (2) above, accumulated, stored, or remaining in the open upon any property within the City contrary to the provisions of subs. (3), (4), (5), and (6) above, or firewood stored contrary to sub. (7) above, they shall notify the owner of said property on which such vehicle, junk, recreation equipment, or firewood is located of the violation of this section. If such vehicle, junk, recreational equipment, or firewood is not removed within 10 days, the Police Department shall cause a citation to be issued to the property owner or the occupant of the property upon which such vehicle, junk, recreation equipment, or firewood is located. In addition, action to abate such nuisance may be commenced, as provided in sec. 13.09 of this chapter.

(10) **PENALTY.** Any person who shall be adjudicated to have violated any of the provisions of this section shall be subject to a forfeiture not to exceed \$50 plus the costs of said prosecution, and, upon default of payment of such forfeiture and costs, shall be imprisoned in the County Jail until such forfeiture and costs are paid, but not to exceed 10 days. Each day that a violation of this section continues shall be deemed a separate offense.

13.09 ABATEMENT OF PUBLIC NUISANCES. (1) **ENFORCEMENT.** The Chief of Police, the Chief of the Fire Department, the Building Inspector, and Health Officer shall enforce those provisions of this chapter that come within the jurisdiction of their respective offices, and they shall make periodic inspections and inspections upon complaint to ensure that such provisions are not violated. No action shall be taken under this section to abate a public nuisance unless the officer shall have inspected or caused to be inspected the premises where the nuisance is alleged to exist and has satisfied himself that a nuisance does, in fact, exist.

(2) **SUMMARY ABATEMENT.** If the inspecting officer shall determine that a public nuisance exists within the City and that there is great and immediate danger to the public health, safety, peace, morals, or decency, the Mayor may direct the proper officer to cause the same to be abated and charge the cost thereof to the owner, occupant or person causing, permitting, or maintaining the nuisance, as the case may be.

(3) **ABATEMENT AFTER NOTICE.** (Ord. #01-2010; Am. Ord. #05-2014) If the inspecting officer shall determine that a public nuisance exists on private premises, but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals, or decency, he shall serve notice on the person causing or maintaining the nuisance to remove the same within 10 days. In the event of a nuisance violation

under Sec. 13.04(8) the time period for notice and removal of the nuisance shall be 7 days. If such nuisance is not removed within the requested time period, the proper officer shall cause the nuisances to be removed as provided in sub. (2). Whenever the inspecting officer shall determine that the same or a similar public nuisance has been repeated or reoccurred within ninety (90) days of a violation and/or a verified written report, the inspecting officer shall leave notice on the person causing or maintaining the nuisance to remove the same within seventy-two (72) hours. If such nuisance is not removed within such seventy-two (72) hours, the nuisance may be removed as provided in sub.(2).

(4) OTHER METHODS NOT EXCLUDED. Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the City or its officials in accordance with the laws of the State of Wisconsin.

(5) COURT ORDER. Except when necessary under sub. (2), no officer hereunder shall use force to obtain access to private property to abate a public nuisance, but shall request permission to enter upon private property if such premises are occupied, and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.

13.095 PROPERTY MAINTENANCE ORDINANCE. (Ord. #02-2010) (1) PURPOSE. The Common Council has found that maintenance of buildings, structures, and premises in the City of Darlington affects the health, safety, and general welfare of the residents of the community. The general purpose of this Ordinance is to protect and enhance the public health, safety, and general welfare of the residents of the City by establishing minimum standards for maintenance of buildings, structures, and premises.

To further its general overall purpose, this Ordinance has the following specific objectives:

(a) To protect the character and stability of all areas within the City.

(b) To provide minimum standards of maintenance necessary to protect the health, safety, and general welfare of persons occupying or using land, buildings, and structures in the City.

(c) To provide minimum standards for the exterior maintenance of all land, buildings, and structures and to thus prohibit the spread of blight.

(d) To declare that land, buildings, structures, and adjacent property which have become or are becoming deteriorated, dilapidated, neglected, fire hazards, a vermin or rodent harborage, or unsanitary may constitute public nuisances, fail to meet the standards of this Ordinance, and are detrimental to the health, safety, and general welfare of the residents of this community.

(e) To preserve the value of land, buildings, and structures throughout the City.

(2) APPLICABILITY. This Ordinance shall be known as the "Property Maintenance Ordinance for the City of Darlington." This Ordinance shall apply to all land, buildings, and structures in the City, without regard to its class or its date of construction, alteration, or repair. The Owner, Tenant, and Operator of same shall be responsible for insuring that the land, buildings, and structures conform to the requirements of this Ordinance.

(3) INTERPRETATION. This Ordinance is not intended to replace or modify standards otherwise established for the construction, replacement, or repair of buildings and structures. However, in the event of any inconsistency or conflict between the provisions of this Ordinance and any other existing Ordinance, the more restrictive provisions shall apply.

(4) DEFINITIONS. For the purpose of this Ordinance, the following words and phrases will be defined as follows:

(a) Accessory Structure. A structure, the use of which is incidental to that of the main building and which is attached thereto or located on the same premises.

(b) Basement. That portion of a building, the floor line of which is below the surface of the ground immediately adjoining it and its ceiling not more than four feet above lot grade.

(c) Building. A combination of materials to form a construction adapted to permanent or temporary use for residence, business, or storage.

(d) Deterioration. The condition or appearance of a building or structure or part thereof, characterized by breaks, holes, rot, crumbling, cracking, peeling, rusting, inadequate paint, or other evidence of decay or neglect.

(e) Dwelling. Any structure designed for use by human occupants for sleeping and living purposes, whether occupied or vacant.

(f) Extermination. The control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping; or by any other recognized and legal pest elimination methods approved by the Health Officer or County Health Department.

(g) Fence. An independent structure forming a barrier at grade or between lots, between a lot and a street or an alley, or between portions of a lot or lots and includes a wall or lattice work screen but excludes a hedge or natural growth, or a barrier of less than eighteen inches in height which is used to protect plant growth.

(h) Garbage. Garbage is all waste, animal, fish, fowl or vegetable matter incident to and resulting from the use, preparation, and storage of food for human consumption.

(i) Infestation. The presence of insects, rodents, vermin, or other pests on the premises which constitute a health hazard.

(j) Junk. Any old or scrap metal, metal alloy, synthetic or organic material or waste, or any junked, ruined, dismantled, or wrecked motor vehicle or machinery, or any part thereof, whether salvageable or not. An unlicensed motor vehicle, at the discretion of local law enforcement officers, may be construed to be a junked motor vehicle.

(k) Nuisance.

1. Any public nuisance known at common law or in equity jurisprudence, or as provided by the Statutes of the State of Wisconsin, or in the Ordinances of the City of Darlington

2. Any attractive nuisance which may prove detrimental to the health or safety of children in a building, on the premises of a building, or upon an unoccupied lot. This includes, but is not limited to: basements, excavations, abandoned iceboxes, refrigerators, motor vehicles, any structurally unsound fences or structures, lumber, trash, fences, debris or vegetation such as poison ivy, oak sumac, which may prove a hazard for inquisitive minors.

(l) Occupant. Any person occupying or having use of a building, structure or premise, or any part thereof.

(m) Operator. Operators shall mean any person who has charge, care, or control of a building, structure, or premise, or a part thereof.

(n) Owner. Any person who alone, jointly, or severally with others, shall hold title to a building, structure or premise, or who shall be in actual possession of, or have charge, care or control of a building, structure or premises as an employee or agent of the titleholder, or who shall be trustee or guardian of the estate or person of the titleholder. For purposes of providing notice under this Ordinance, the City may rely on the presumption that the owner is the person or persons designated on the tax roll with respect to the premises.

(o) Person. The word "person" shall include a corporation, firm, partnership, association, organization, and any other group acting as a unit as well as individuals, including a personal representative, receiver, or other representative appointed according to law. Whenever the word "person" is used in any section of this Ordinance prescribing a penalty or fine, as to partnerships or associations, the word shall include the partners or members hereof, and as to corporations, shall include the officers, agents, or members thereof who are responsible for any violation of such section.

(p) Premises. When used herein, the word "premises" shall include land, buildings, structures, or any part thereof.

(q) Refuse. All solid waste (except body waste) including but not limited to: garbage, rubbish, ashes, street cleanings, abandoned, non-licenses, or inoperable motor vehicles, and solid market and industrial wastes.

(r) Repair. To restore to a state of operation, serviceability, or appearance in conformity with this Ordinance.

(s) Replace. To remove an existing item or portion of a building or structure and to construct or install a new item of similar or improved quality as the existing item when it was new. Replacement will ordinarily take place when the item is incapable of repair.

(t) Rubbish. Rubbish is the miscellaneous waste material, combustible and non-combustible, resulting from housekeeping and ordinary mercantile enterprises, and includes but is not limited to boxes, cartons, excelsior, paper ashes, cinders,

tin cans, bottles, and broken glass, rubber, grass clippings, brush, leaves, and garden plants.

(u) Structure. Anything constructed or erected which requires location on the ground or is attached to something having location on the ground, including a building, fence free standing wall, sign, or other advertising medium, whether detached or projecting.

(v) Substandard. All buildings which do not conform to the minimum standards established by this chapter and by any other provisions of this Code, or Ordinances or by the State of Wisconsin Administrative Code.

(w) Weathering. Deterioration, decay, or damage by exposure to the elements.

(x) Yard. An open space at grade on the same lot as a building or structure located between such building or structure and the adjoining lot line, and/or street line.

(5) COMPLIANCE IS RESPONSIBILITY OF OWNERS AND OPERATORS. (a) Each owner of land, buildings, and structures (collectively, "premises") shall have an independent responsibility for compliance. All owners shall be jointly and severally responsible for performance of the duties and obligations prescribed in this Ordinance. No owner shall be relieved from any such duty or obligation because another person is also responsible for performance of such duty or obligation. No owner shall be relieved from liability under this Ordinance because said person has contracted said responsibility to an operator or other person.

(b) Operator(s) of land, buildings, and structures (collectively, "premises") in the City shall also have responsibility for compliance. Operator(s) shall be jointly and severally responsible with owner(s) for performance of the duties and obligations prescribed in this Ordinance.

(6) DUTIES AND RESPONSIBILITIES OF OWNERS AND OPERATORS. (a) Maintenance and Appearance of Exterior of Buildings and Structures.

1. The exterior of buildings and structures shall be free of all nuisances, unsanitary conditions, and hazards to the safety of occupants, pedestrians, and other persons utilizing the premises.

2. The exterior appearance of all buildings and structures shall reflect a level of maintenance in keeping with the standards of the neighborhood, and shall not constitute a

blighting factor or an element leading to the progressive deterioration of the neighborhood.

3. Exterior porches, landings, balconies, stairs and fire escapes shall be provided with banisters or railings properly designed and maintained to minimize the hazard of fallings, and the same shall be kept structurally sound, in good repair, and free of defects.

4. The exterior of every building and structure, including fences, shall be maintained in good repair and all surfaces thereof shall be kept painted as necessary for purposes of preservation and appearance. Buildings and structures shall be maintained free of broken, loose shingles, crumbling stone or brick, excessive peeling paint, or other conditions reflective of deterioration or inadequate maintenance.

5. Every dwelling and accessory structure, exterior walls, siding, and roofs shall be kept structurally sound and in a state of good repair to avoid safety, health, or fire hazards and shall be so maintained as to be weather and watertight.

6. Every building and structure on the premises shall be adequately protected against rats, mice, termites, and other vermin infestation, and shall not permit the entrance of such rats, mice, termites, and other vermin. Owners and operators shall be responsible for the extermination of such vermin from that part of the premises under their exclusive control.

7. Every building shall have adequate refuse, garbage, or rubbish storage facilities. No owner or operator shall allow occupants to accumulate rubbish, boxes, lumber, metal refuse, or other materials which may provide a harborage for rodents or vermin.

(b) Maintenance and Appearance of Land.

1. The land surrounding the buildings and structures shall be kept free of hazards and clear of debris including, but not limited to, brush, weeds, broken glass, stumps, roots, obnoxious growths, filth, garbage, trash, refuse, old tires, and junk. The sole exception is where said debris has been properly placed for pick up by the City's waste disposal contractor.

2. Every yard, court, driveway, or other portion of the

land shall be graded or drained so as to prevent the accumulation of stagnant water on any such surface. Driveways shall be maintained in good condition and repair.

(c) Application to All Premises. This Ordinance applies whether or not the premises are temporarily or continuously occupied or unoccupied, inhabited or uninhabited, commercial or noncommercial, and whether or not there is a structure, building, or other improvement on the land.

(7) INSPECTION BY BUILDING INSPECTOR OR POLICE OFFICER. The Building Inspector and Police Officers are authorized and shall make exterior inspections of the exterior of the premises for the sole purpose of determining whether the premises conform to the requirements of this Ordinance.

Prior to making such an inspection, the Building Inspector, Police Officer, or their designated representative shall give written notice to the owner, operator, or occupant of the premises. Notice may be given in person and shall be deemed to have been given within 5 days of the date notice has been deposited, postage-paid, in the U.S. mail, and addressed to the name and address on the tax rolls for the premises.

Following such notice, the owner, operator, and/or occupant shall give the Building Inspector and/or Police Officer full access to the land and the exterior of the buildings and structures so that the Building Inspector and/or Police Officer is able to conduct an exterior inspection of the premises. Failure of an owner, operator, or occupant to permit such access shall constitute a violation of this Ordinance, and may also result in the Building Inspector obtaining a special inspection warrant from Lafayette County Circuit Court.

(8) ADMINISTRATIVE PROVISIONS. (a) The Building Inspector and Police Officers are hereby made responsible for the enforcement of this Ordinance. All inspections, enforcement, orders, or matters relating to violations of this Ordinance shall be under their direction and supervision. They may request such other public officials or employees of the City to perform duties as they deem necessary to the enforcement.

(b) The Building Inspector and Police Officers shall be supplied with official identification and shall exhibit such identification to the owner, operator, or occupant upon request.

(9) NOTICE OF VIOLATION. If, following the initial inspection

the Building Inspector or Police Officer determines that there are grounds to believe that there has been a violation of any provisions of this Ordinance, notice of such violation shall be given to the owner(s). The notice of violation shall:

(a) Be in writing;

(b) Indicate the nature of the alleged violation(s);

(c) Indicate the time for the correction or abatement of the alleged violation and/or submission of a plan to correct the alleged violation, which time shall not be less than 20 days nor more than 40 days;

(d) Be served upon the owner in the following manner:

1. Given to the owner by the Building Inspector, Police Officer or their designated representative; or

2. Sent by regular mail to the owner's last known address, as said address appears on the tax rolls. An affidavit of mailing shall be sufficient evidence of service, which service shall be deemed effective within 5 business days of the date of mailing.

(e) Advise the owner of the owner's right to request a hearing before the Common Council within 5 business days of the date of service and further advise the owner that the owner's failure to make such a request shall result in the notice of violation being deemed an order of violation.

(10) NONCOMPLIANCE-REMEDY OF DEFECTS; ABATEMENT. (a) The owner, operator, or occupant of the premises shall have the time specified in the notice of violation to remedy the violations.

(b) The Building Inspector or Police Officer shall, in his or her discretion, have the ability to extend the time for corrections if the circumstances warrant an extension and the owner, operator, or occupant is making a good faith effort to correct the violations.

(c) If the owner, operator, or occupant of the premises, after notice of violation and order, fails or refuses to timely remedy the violations, then the City, at its sole option, may cause such work to be done. Prior to commencing such work, the Building Inspector or Police Office shall do the following:

1. Provide notice to the owner and occupant that the City will abate the violations along with an estimate of the

approximate dates and times during which abatement will occur; and,

2. Have the City Clerk certify the approximate cost for any such work done, including reasonable costs for administration and inspection fees (collectively, "costs of abatement"), and provide notice of same to the owner, with a copy to the occupant.

(d) Following such notice, the owner, operator, and/or occupant shall give the persons designated by the City full access to the land and the exterior of the buildings and structures to abate the violations. Failure of an owner, operator, or occupant to permit such access shall constitute a violation of this Ordinance, and may also result in the City obtaining an injunction from Lafayette County Circuit Court. Reasonable costs of obtaining the injunction shall be added as administration to the costs of abatement and notice of the additional costs shall be provided to the owner.

(e) If the owner fails to pay the costs of abatement within 30 days of the notice from the City Clerk, interest shall accrue against the balance due at the rate of 1% per month and the total balance due shall become a lien against real estate on the next tax roll in accordance with the law.

(11) TRANSFER OF OWNERSHIP OF NON-COMPLYING BUILDING. It shall be unlawful for the owner of any building, structure, or premises who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease, or otherwise dispose of to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish to the Building Inspector a signed and notarized statement from the grantee, transferee, mortgagee, or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation. To assure compliance with this provision, the City may file a lis pendens against the real estate.

(12) SEVERABILITY. If any section, subsection, paragraph, clause, sentence, phrase, or word contained in this Ordinance is declared invalid, the remaining portions of the Ordinance shall remain in full force and effect.

13.10 COST OF ABATEMENT. In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuance, or maintenance of a public nuisance, the cost of

abating a public nuisance by the City shall be collected as a debt from the owner, occupant or person causing, permitting, or maintaining the nuisance, and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

13.11 SMOKING PROHIBITED IN CERTAIN AREAS. (Ord. #03-2010) (1) PURPOSE. The purposes of this Ordinance are: (a) To protect the public health and welfare by prohibiting smoking in public places and places of employment; and

(b) To guarantee the right of nonsmokers to breathe smoke-free air.

(2) DEFINITIONS. (a) Bar. An establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to taverns, nightclubs, cocktail lounges, and cabarets.

(b) Childcare facility. Any state-licensed or county certified child care facility including, but not limited to licensed family daycare or licensed group daycare centers, licensed day camps, certified school-age programs, and Head Start programs.

(c) Educational facility. Any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board.

(d) Employee. Any person who is employed by any employer for direct or indirect monetary wages or profit, including those full time, part-time, temporary, or contracted for from a third party; employee also means any person who serves as a volunteer for a business or nonprofit entity.

(e) Employer. Any person, partnership, limited liability company, corporation, or other entity, including a public or nonprofit entity who employs the services of one (1) or more individual persons.

(f) Enclosed area. All space between a floor and a ceiling that is closed in on all sides by doors, walls, or windows, whether open or closed, the combination of which extend from the floor to the ceiling. A wall includes any physical barrier, whether temporary or permanent.

(g) Health care facility. An office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals, or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

(h) Person in charge. The person who ultimately controls, governs, or directs the activities aboard a public conveyance or within or at a place where smoking is regulated under this section, regardless of the person's status as owner or lessee.

(i) Place of employment. Any indoor area at which two or more individuals perform any type of service for consideration of payment under any type of contractual relationship, including, but not limited to, an employment relationship with or for a private corporation, partnership individual, or government agency. Place of employment includes any indoor area where two or more individuals gratuitously perform services for which individuals are ordinarily paid. A place of employment includes, but is not limited to, public conveyances, factories, warehouses, offices, retail stores, restaurants, bars, banquet facilities, theaters, food stores, banks, financial institutions, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, health care facilities, and rooms or areas containing office equipment used in common. Vehicles used in whole or in part for work purposes are places of employment during hours of operation if more than one person is present. An area in which work is performed in a private residence is a place of employment during hours of operation if:

1. The homeowner uses the area exclusively and regularly as a principal place of business and has one or more on-site employees; or

2. The homeowner uses the area exclusively and regularly as a place to meet or deal with patients, clients, or customers in the normal course of the homeowner's trade or business.

(j) Private residence. Premises owned, rented, or leased for temporary or permanent habitation.

(k) Public place. Any enclosed, indoor areas used by the general public, including, but not limited to, restaurants, bars, and other food or liquor establishments; retail stores and other commercial establishments; educational facilities, both public and private; hospitals; nursing homes; auditoriums; sports arenas, including enclosed areas in outdoor arenas; public transportation vehicles, including buses and taxicabs, and ticket, boarding and waiting areas of public transportation facilities; meeting rooms; elevators; polling places; restrooms, lobbies, reception areas, hallways, and other common-use areas; and common areas of apartment buildings and other multiple-unit residential facilities.

(l) Room. A space within a building completely enclosed with walls, partitions, floor, and ceiling, except for openings for light, ventilation, ingress, and egress.

(m) Smoking. Inhaling or exhaling smoke from any lighted cigarette, cigar, pipe, or similar tobacco product or other lighted plant product intended for inhalation. A person having in their possession or control a lighted tobacco product or lighted plant product is also considered smoking.

(n) Sports Area. Sports pavilions, bleachers, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller, and indoor ice rinks, and bowling centers.

(o) Tobacco Bar. A bar that generates fifty percent (50%) or ore of its total annual gross income from the on-site sale of tobacco products, not including any sales from vending machines.

(p) Retail Tobacco Store. A retail establishment that derives more than eighty percent (80%) of its gross revenue from the sale of cigars, cigarettes, pipes, or other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Retail tobacco store" does not include a tobacco department or section of a larger commercial establishment or any establishment with a Class 'B' fermented malted beverages license or `Class B' intoxicating liquor license or any restaurant in existence on 5/1/08.

(3) PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES. Except as otherwise provided, it shall be unlawful for any person to smoke in public places, including but not limited to the following:

- (a) Public forms of transportation, including but not limited to motor buses, taxicabs, or other public passenger vehicles.
- (b) Theatres, libraries, museums, auditoriums, and convention halls that are used by or open to the public.
- (c) Any childcare facility.

Incorporated herein by reference are the following Wisconsin statutory and administrative code sections and any amendments or renumbering thereof: Sec. 101.123(1)(ad) and (2)(bm), Wis. Stats; See s. HFS 45.02(4), 45.06(8)(g), 46.03(13), 46.06(2)(h), and 46.08(2)(c), Wis. Admin. Code.

- (d) Retail stores.
- (e) Health care facilities.
- (f) Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political, or social purposes.
- (g) Polling places.
- (h) Service lobbies, waiting areas, and the common areas open to the public of financial institutions, business and professional offices, and multi-unit commercial facilities.
- (i) Self-service laundry facilities.
- (j) Enclosed, indoor areas of restaurants.
- (k) Common areas of malls.
- (l) City buildings.
- (m) City-owned or leased motor vehicles.
- (n) Sports arenas, including enclosed places in outdoor arenas.
- (o) Enclosed, indoor areas of bars.

(p) Bed and breakfast establishments, hotels, and motels, except as provided in Section (f).

(q) Educational facilities, both public and private.

(4) PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT. (a) It shall be unlawful for any person to smoke cigarettes or tobacco products in places of employment.

(b) Every building that is a place of employment shall have at least one entrance that is smoke-free. For buildings with fewer than four (4) entrances, no more than one entrance may be designated as a smoking entrance. For buildings with four (4) or more entrances, no more than twenty-five percent (25%) of all entrances may be designated as a smoking entrance.

(5) PROHIBITION OF SMOKING IN OUTDOOR AREAS. Smoking shall be prohibited in the following outdoor places:

(a) Within a reasonable distance outside any entrances designated smoke-free pursuant to subsection (d) (2) above, open windows, and intake of ventilation systems of enclosed areas where smoking is prohibited, so as to ensure that tobacco smoke does not enter those areas.

(b) In all outdoor arenas, stadiums, and amphitheaters, except in designated smoking areas, which may be established only in perimeter areas at least 15 feet from any seating areas or concession stands. Smoking shall also be prohibited in, and within 15 feet of, bleachers and grandstands for use by spectators at sporting and other public events.

(c) In outdoor common areas of nursing homes, except in designated smoking areas, which must be located at least 15 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

(6) WHERE SMOKING IS NOT REGULATED. The following areas shall not be subject to the smoking restrictions of this section:

(a) Private residences, except when used as a childcare, adult daycare, or healthcare facility.

(b) Outdoor areas of places of employment except those covered by the provisions of Section (e) (2).

(7) SIGNAGE. (a) "Smoke-free Establishment" or "No Smoking" signs or the international "No Smoking" symbol (consisting of a

pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Ordinance, by the owner, operator, manager, or other person in control of that place. Signs shall reference "Darlington Ordinance 13.11".

(b) "Smoking Allowed" signs shall be clearly and conspicuously posted in every public place and place of employment where smoking is not prohibited by this Ordinance, by the owner, operator, manager, or other person in control of that place. Signs shall reference "Darlington Ordinance 13.11".

(c) Every public place and place of employment where smoking is prohibited by this Ordinance shall have posted at every entrance a sign not smaller than eleven by eight and one-half (11" x 8½") inches clearly stating that smoking is prohibited. Each sign and the language contained therein shall be clearly visible from a distance of at least ten (10) feet. Every vehicle that constitutes a place of employment under this Ordinance shall have at least one conspicuous sign, visible from the exterior of the vehicle, clearly stating that smoking is prohibited.

(d) All ashtrays shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area. (5) It shall be unlawful for any person to remove, deface, or destroy any sign required by this Section, or to smoke in any place where any such sign is posted.

(8) NONRETALIATION; NONWAIVER OF RIGHTS. (a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this Ordinance. Notwithstanding Section (j), violation of this Subsection shall be punishable by a fine not to exceed \$1000 for each violation.

(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

(9) ENFORCEMENT. (a) This Ordinance shall be enforced by the Police Chief, Building Inspector, or an authorized designee.

(b) Notice of the provisions of this Ordinance shall be given in writing to all applicants for a business license in the City of Darlington.

(c) Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Chief of Police.

(d) The Police Department, Fire Department, Building Inspector, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.

(e) If an owner, manager, operator, or employee of an establishment subject to this Ordinance observes a person violating the Ordinance, he or she shall immediately direct the person in violation to stop smoking. If the person violating the Ordinance does not stop smoking, the owner, manager, operator, or employee shall make reasonable efforts to prevent smoking in prohibited areas by:

1. Approaching smokers who fail to voluntarily comply with this section and requesting that they extinguish their cigarette or tobacco product and refrain from smoking, or
2. Refusing service to anyone smoking in a prohibited area.

(f) In addition to the remedies provided by the provisions of this Section, the Chief of Police or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

(10) VIOLATIONS AND PENALTIES. (a) A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by:

1. A forfeiture not exceeding one hundred dollars (\$100) for a first violation.
2. A forfeiture not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
3. A forfeiture not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

(b) Except as otherwise provided in Section (h) (1), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Ordinance shall be guilty of an infraction, punishable by:

1. A forfeiture not exceeding one hundred dollars (\$100) for a first violation.
2. A forfeiture not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
3. A forfeiture not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

(c) In addition to the forfeitures established by this Section, violation of this Ordinance by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Violation of this Ordinance is hereby declared to be a public nuisance, which may be abated by the City by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.

(e) Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

(11) CLEAN INDOOR AIR. (a) Intent and Construction. The City of Darlington finds that it is in the interests of the health, safety, and welfare of the community to adopt by reference Sec. 101.123, Wis. Stats., and subsequent amendments, additions, and recodifications thereto. It is the intent of this Ordinance that where there may be conflict between Sec. 101.123, Wis. Stats., or any subsequent amendments, additions, and recodifications thereto, and this Ordinance, that the provisions of the applicable state statute shall apply. This Ordinance shall not be construed to mean that progressive discipline of City employees for violations of laws, rules, and regulations is only authorized where explicitly provided by Ordinance.

1. In the event that Sec. 101.123, Wis. Stats, as effective July 5, 2010, is repealed by an act of the Wisconsin Legislature, this ordinance shall be null and void.

(b) Penalty. The penalties provided by Sec. 101.123, Wis. Stats. shall be in addition to the penalties provided for violation of this Ordinance when a person has violated both laws. In addition to the penalties provided by this Ordinance and Sec. 101.123, Wis. Stats., any City employee who violates any provision of this Ordinance or Sec. 101.123, Wis. Stats., may also be subject to progressive discipline by his or her employer.

(12) SEVERABILITY. In the event any section, subsection, clause, phrase, or portion of this ordinance is for any reason held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

(13) REPEAL AND EFFECTIVE DATE. All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall take effect on July 6, 2010.

13.15 PENALTY. Any person who shall violate any provision of this chapter or permit or cause a public nuisance shall be subject to a penalty as provided in sec. 25.04 of this Code.