

TITLE 11

Offenses and Nuisances

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CHAPTER 1

State Statutes Adopted

11-1-1	Offenses Against State Laws Subject to Forfeiture (Amended 09/14/1999 by RC-75) (Amended 2/8/2011, Ordinance RC-299)
11-1-2	Penalties (Amended 2/23/2006, Ordinance #RC-214)

SEC. 11-1-1 OFFENSES AGAINST STATE LAWS SUBJECT TO FORFEITURE (Amended 2/8/2011, Ord RC-299)

The following statutes defining offenses against the peace and good order of the State are adopted by reference to define offenses against the peace and good order of the City provided the penalty for commission of such offenses hereunder shall be limited to a forfeiture imposed under the general penalty provisions of this Code of Ordinances. Any future amendments, revisions or modifications of the Statutes incorporated herein by reference are intended to be made part of this Code.

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947.01	Disorderly Conduct

- 947.012 Unlawful Use of Telephone
- 947.013 Harassment
- 947.0125(2)(a) Disorderly Conduct – Electronic Communication with threat of physical harm
- 947.0125(2)(b) Attempt Disorderly Conduct – Electronic Communication with threat of physical harm
- 947.0125(2)(c) Disorderly Conduct – Electronic Communication using obscene, lewd or profane language
- 947.0125(2)(d) Attempt Disorderly Conduct – Electronic Communication using obscene, lewd or profane language (Amended 2/8/2011, Ord RC-299)
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- 947.16 Contributing to Truancy
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- 951.015 Construction and Application
- 951.02 Mistreating Animals
- 951.03 Dognapping or Catnapping
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- 951.05 Transportation of Animals
- 951.06 Use of Poisonous and Controlled Substances
- 951.07 Use of Certain Devices Prohibited
- 951.08 Instigating Fights Between Animals
- 951.09 Shooting at Caged or Staked Animals
- 951.10 Sale of Baby Rabbits, Chicks and Other Fowl
- 951.11 Artificially Colored Animals; Sale
- 951.13 Providing Proper Food and Drink to Confined Animals
- 951.14 Providing Proper Shelter
- 951.15 Animals; Neglected or Abandoned; Police Powers
- 951.16 Investigation of Animal Cruelty Complaints
- 951.17 Reimbursement for Expenses
- 961.571 Definitions (Amended by insertion 09/14/1999 by RC-75)
- 961.572 Determination (Amended by insertion 09/14/1999 by RC-75)
- 961.573 Possession of drug paraphernalia (Amended by insertion 09/14/1999 by RC-75)
- 961.574 Manufacture or delivery of drug paraphernalia (Amended by insertion 09/14/1999 by RC-75)
- 961.575 Delivery of drug paraphernalia to a minor (Amended by insertion 09/14/1999 by RC-75)
- 961.576 Advertisement of drug paraphernalia (Amended by insertion 09/14/1999 by RC-75)
- 961.577 Municipal ordinances (Amended by insertion 09/14/1999 by RC-75)

SEC. 11-1-2 PENALTIES.**(a) Enforcement.**

- (1) Penalties. In addition to the general penalty of this Code in Section 1-1-7 or any other State Statutes Adopted penalty imposed for violation of any Section of this Title, any person who shall cause physical damage to or destroy any public property shall be liable for the cost of replacing or repairing such damaged or destroyed property. The parent or parents of any unemancipated minor child who violates Section 11-3-1 may also be held liable for the cost of replacing or repairing such damaged or destroyed property in accordance with the Wisconsin Statutes. Nothing in this Code of Ordinances shall prevent the Police State Statutes Adopted from referring violations of the provisions of this Title to the District Attorney's office in the interest of justice.
- (2) Stipulation of Guilt or No Contest. Stipulations of guilt or no contest may be made by persons arrested for violations of the ordinances contained in this Chapter in accordance with Sec. 66.12(1)(b), Wis. Stats. Stipulations shall conform to the form contained on the Uniform Ordinance Citation. Stipulations may be accepted by the Police Department.
- (3) Deposits. Any person stipulating guilt or no contest under Subsection (2) shall deposit a forfeited penalty as provided in a schedule established by the Municipal Judge and approved by the Common Council. Deposits may be brought or mailed to the office of the City Treasurer as directed by the arresting officer.
- (4) The Court costs taxed by the City of Delavan Municipal Court shall be \$28.00, which at the time of the passage of this ordinance is the maximum amount that may be taxed as Municipal Court costs pursuant to the municipal court bond schedule. This amount of costs to be taxed by the Municipal Court shall be and continue as the maximum amount of local court costs that may be taxed pursuant to State Statute and regulation and the maximum shall be modified as modified by Wisconsin Statute or regulation and shall remain the maximum as permitted under Wisconsin law. It is understood that at the time of the passage of this ordinance, the Municipal Court costs are controlled by Section 814.65, Wisconsin Statutes, permitting a maximum of \$28.00 on each separate matter. (Amended 2/23/2006, Ordinance #RC-214)

(b) Attempt.

- (1) Whoever attempts to commit an act prohibited by Title 11 of the Code of Ordinances of the City of Delavan may be required to forfeit the maximum penalty for the completed act.
- (2) An attempt to commit an act prohibited by the ordinances in Title 11 requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute a violation of these ordinances and that he does acts towards the commission of the violation which demonstrate unequivocally, under all the circumstances, that he formed that intent and would commit the violation except for the intervention of another person or some other extraneous factor.

(c) Parties to Acts Prohibited in Title 11.

- (1) Whoever is concerned in the commission of an act prohibited by Title 11 of this Code of Ordinances is a principle and may be charged with and convicted of the commission of said act although he did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other act prohibited by these ordinances.
- (2) A person is concerned in the commission of an act prohibited by these ordinances the:
 - a. Directly commits the act; or
 - b. Intentionally aids and abets the commission of it; or
 - c. Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it. Such a party is also concerned in the commission of any other act which is committed in pursuance of the intended violation and which, under the circumstances, is the natural and probable consequence of the intended violation. This

paragraph does not apply to a person who voluntarily changes his mind and no longer desires that the act be committed and notifies the other parties concerned of his withdrawal within a reasonable time before the commission of the violation so as to allow the others also to withdraw.

CHAPTER 2

Offenses Against Public Safety and Peace

11-2-1	Regulation of Firearms, Explosives, and Other Missiles (Repealed and Recreated 10/11/2011, Ord. RC-308)
11-2-2	Carrying Concealed Weapons Prohibited; Certain Weapons Prohibited (Repealed and Recreated 10/11/2011, Ord. RC-308)
11-2-3	Obstructing Streets and Sidewalks Prohibited
11-2-4	Loitering Prohibited
11-2-5	Loud and Unnecessary Noise Prohibited
11-2-6	Disorderly Conduct (Repealed and Recreated 10/11/2011, Ord. RC-308)
11-2-7	Possession of Controlled Substances
11-2-8	Synthetic Cannabinoid Prohibited (Created 3/8/2011, Ordinance 302)
11-2-9	Prohibited Possession of Vaping Device Products Under the Age of 18 (Created 8/20/29)

SEC. 11-2-1 REGULATION OF FIREARMS, EXPLOSIVES, AND OTHER MISSILES.

- (a) **Discharge of Firearms and Other Missile Weapons Regulated.** No person, except a law enforcement officer in the performance of an official duty, shall discharge any firearm or missile weapon within the City.
- (b) **Shooting Into City Limits.** No person shall in the territory adjacent to the City discharge any firearm in such manner that the discharge shall enter or fall within the City.
- (c) **Exceptions.** Subsections (a) and (b) shall not apply if the actor's conduct is justified or, had it been subject to a criminal penalty, would have been subject to a defense described in S. 939.45, Wis Stats.
- (d) **Shooting Ranges.** This Section shall not prevent the maintenance and use of duly supervised rifle or pistol ranges or shooting galleries approved by the Common Council, upon the recommendation of the Chief of Police, where proper safety precautions are taken.
- (e) **Explosive Devices.** No person shall discharge or detonate any dynamite, nitroglycerin or other explosive within the City without first obtaining a permit to do so from the Chief of Police.

SEC. 11-2-2 CARRYING CONCEALED WEAPONS PROHIBITED; CERTAIN WEAPONS PROHIBITED.

- (a) **Definitions**
 - (1) "Handgun" shall mean any weapon designed or redesigned, or made or remade, and intended to be fired while held in one hand and to use the energy of an explosive to expel a projectile through a smooth or rifled bore. This term does not include prohibited firearms, such as machine guns, short-barreled rifles or short-barreled shotguns.
 - (2) "Weapon" shall include handguns, electric weapons as defined in s. 941.295 (1c)(a), Wis. Stats, knives other than switchblade knives, or Billy clubs
- (b) **Concealed Weapons Prohibited.**
 - (1) No person within the City, wear or in any manner carry under his clothes or conceal upon or about his person any deadly or dangerous weapon, provided this Subsection shall not apply to a peace or law enforcement officer, a person acting within the terms of a license to carry a concealed weapon as defined s. 175.60, Wis. Stats., or an out-of-state licensee as defined in s. 175.60 (1) (g), Wis. Stats.,
 - (2) or any other individual authorized to carry such weapon under Wisconsin law.
 - (3) This rule shall not apply to an individual carrying a concealed weapon in his or her own dwelling or place of business or on land that he or she owns, leases, or legally occupies.

(c) Weapons Prohibited

- (1) Notwithstanding the above, neither a licensee nor an out of state licensee may knowingly carry a weapon or a firearm that is not a weapon in any of the following places:
 - (a) Any portion of a building that is a police station;
 - (b) Any portion of a building that is a prison, jail, house of corrections, or a secured correctional facility;
 - (c) Any portion of a building that is a municipal courtroom if court is in session.
- (2) Except that those prohibitions do not apply to the following:
 - a. A weapon in a vehicle driven or parked in a parking facility located in a building that is used as, or any portion of which is used as a location under (1).
 - b. A weapon in a courthouse or courtroom if a judge who is licensee is carrying the weapon or if another licensee or out-of-state licensee is carrying the weapon with written permission from the judge.
 - c. A weapon carried by a district attorney or assistant district attorney in a courthouse or courtroom if they are a licensee.

(d) Trespass

- (1) No person, whether holding a concealed carry license or otherwise authorized to carry a concealed weapon under Wisconsin Act 35, may while carrying a weapon, enter or remain in the following places if the owner or occupant of such has notified the actor not to enter or remain there while carrying a weapon or with that type of weapon:
 - a. At a residence that the actor does not own or occupy
 - b. In the common area of a building, or on the grounds of the building that is a non-single family residence, except with regards to a parking lot if the weapon is in a vehicle;
 - c. Any part of a nonresidential building, grounds of a nonresidential building, or land that the actor does not own or occupy, except that this provision shall not apply to a part of a building, grounds, or land occupied by the State or City, or to buildings or land owned by a university or college, or if the weapon is in a vehicle on any part of a building, grounds or land used as a parking facility;
 - d. At a special event as defined in s. 943.13(e)(h), Wis. Stat., except that this provision shall not apply if the weapon is in a vehicle driven or parked in any part of at the special event grounds or building used as a parking facility;
 - e. Any part of a building that is owned, occupied, or controlled by the State or City, except that this provision does not apply to a person who leases residential or business premises in the building or if the weapon is in a vehicle driven or parked in any part of the building used as a parking facility;
 - f. In any privately or publicly owned building on the grounds of a university or college, except that this provision does not apply to a person who leases residential or business premises in the building or, if the firearm is in a vehicle driven or parked in any part of the building used as a parking facility;
- (2) For purposes of (1), an owner or occupant, other than the owner or occupant of a single family residence, will be deemed to have notified an individual if they have posted signs, in accordance with the provisions of s. 943.13(2)(bm), at least 5 inches by 7 inches in size stating the restriction.

SEC. 11-2-3 OBSTRUCTING STREETS AND SIDEWALKS PROHIBITED.

- (a) **Obstructing Streets.** Except as otherwise provided, no person shall obstruct, loiter, cause a nuisance or engage in any sport or exercise on any public street, sidewalk, bridge or public ground within the City in such a manner as to:
 - (1) Prevent or obstruct the free passage of pedestrian or vehicular traffic thereon;
 - (2) Prevent or hinder free ingress or egress to or from any place of business or amusement, church, public hall or meeting place; or
 - (3) Cause a nuisance by congregating and hindering the free passage of pedestrian or vehicular traffic.
- (b) **Obstructing Sidewalk Prohibited.** No person shall block any sidewalk or bridge by obstructing the same so that it is difficult for a pedestrian to travel along the sidewalk without leaving the sidewalk and walking on adjacent property or on the street.
- (c) **Definitions.** As used in this Section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:
 - (1) Loiter. To sit, stand, loaf, lounge, wander or stroll in an aimless manner or to stop, pause or remain in an area for no obvious reason.
 - (2) Nuisance. Unnecessary conduct which may tend to annoy, intimidate, threaten or otherwise disturb another in or about any public street, sidewalk, bridge or public ground which is offensive to the public morals or decency of the citizens of the City of Delavan.
 - (3) Obstruct. To interfere with unobstructed travel by any means, including but not limited to standing on the part of the walk that is fit for travel, or placing any object or vehicle whatsoever on such sidewalk.
 - (4) Sidewalk. Any public sidewalk. The term shall not include sidewalks or walkways on private property in shopping centers, apartment complexes, office building sites or any other private property.

SEC. 11-2-4 LOITERING PROHIBITED.

- (a) **Public Property Loitering Prohibited.**
 - (1) No person shall loaf or loiter in groups or crowds upon public streets, sidewalks, or adjacent doorways or entrances, street crossings or bridges or in any other public place, after being requested to move by any police officer.
 - (2) Upon being requested to move, a person shall immediately comply with such request by leaving the premises or area thereof at the time of the request.
- (b) **Private Property Loitering Prohibited.**
 - (1) No person shall loiter in or about any private premises or adjacent doorways or entrances or upon private property held out for public use, including, but not limited to, business or industry parking lots or shopping malls without invitation from the owner or occupant or by any person in authority at such places.
 - (2) Upon being requested to move by any such person in authority or by any police officer, a person shall immediately comply with such request by leaving the premises or area thereof at the time of the request.
- (c) **Prowling Prohibited.** No person shall loiter or prowl in a place, at a time or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person takes flight upon appearance of a police or peace officer, refuses to identify himself or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances

makes it impracticable, a police or peace officer shall, prior to any arrest for an offense under this Section, afford the person an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this Subsection if the police officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the person was true and, if believed by the police or peace officer at the time, would have dispelled the alarm.

- (d) **Definitions.** As used in this Section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:
- (1) Loiter. To sit, stand, loaf, lounge, wander or stroll in an aimless manner or to stop, pause or remain in an area for no obvious reason.
 - (2) Nuisance. Unnecessary conduct which may tend to annoy, intimidate, threaten or otherwise disturb another in or about any public street, sidewalk, bridge or public ground which is offensive to the public morals or decency of the citizens of the City of Delavan

SEC. 11-2-5 LOUD AND UNNECESSARY NOISE PROHIBITED.

- (a) **Loud and Unnecessary Noise Prohibited.** It shall be unlawful for any person to make, continue or cause to be made or continued any loud and unnecessary noise.
- (b) **Types of Loud and Unnecessary Noises.** The following acts are declared to be loud, disturbing and unnecessary noises in violation of this Section, but this enumeration shall not be deemed to be exclusive:
 - (1) Horns signaling devices. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place in the City for longer than three (3) seconds in any period of one (1) minute or less, except as a danger warning; the creation of any unreasonable loud or harsh sound by means of any signaling device and the sounding of any plainly audible device for an unnecessary and unreasonable period of time.
 - (2) Radios, phonographs similar devices. The using, operating or permitting to be played, used or operated any radio receiving set; musical instrument, phonograph or other machine or device for the producing or reproducing of sound in a loud and unnecessary manner. The operation of any set, instrument, phonograph, machine or device in a manner as to be plainly audible at the properly line of the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this Section.
 - (3) Loudspeakers, amplifiers for advertising. The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting attention of the public to any building or structure. Announcements over loudspeakers can only be made by the announcer in person and without the aid of any mechanical device.
 - (4) Animals, birds. The keeping of any animal or bird which causes frequent or long continued unnecessary noise
 - (5) Steam whistles. The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of proper City authorities.
 - (6) Exhausts. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine or motor boat except through a muffle or other device which will effectively prevent loud or explosive noises therefrom.
 - (7) Construction or repair of buildings and/or streets. The erection (including excavation), demolition, alteration or repair of any building and/or street, as well as the operation of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or any other similar equipment attended by loud or unusual noise, other than between the hours of 7:00 a.m. and 10:00 p.m. on weekdays; provided,

however, the Director of Public Works shall have the authority, upon determining that the loss or inconvenience which would result to any party in interest would be extraordinary and of such nature as to warrant special consideration, to grant a permit for a period necessary within which time such work and operation may take place within the hours of 10:00 p.m. to 7:00 a.m.

- (8) Schools, churches, hospitals. The creation of any excessive noise on any street adjacent to any school, institution of learning, or church while in use, or adjacent to any hospital, which unreasonably interferes with the normal operation of that institution, or which disturbs or unduly annoys patients in the hospital provided that conspicuous signs are displayed in those streets indicating a school or hospital.
 - (9) Exceptions. The provisions of this Section shall not apply to:
 - a. Any vehicle of the City while engaged in necessary public business.
 - b. Excavations or repairs of streets or other public construction by or on behalf of the City, County, or State at night when public welfare and convenience renders it impossible to perform such work during the day.
 - c. The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in nature, or as permitted in Subsection (c) below.
 - d. Public observances and events, including fireworks.
- (c) **Permits for Amplifying Devices.**
- (1) Permit Required. The use of loudspeakers or amplifying devices on the streets or in the parks of the City of Delavan is prohibited unless the party desiring to use such loudspeaker or amplifying device first obtains a permit from the Chief of Police.
 - (2) Grounds or Reasons for Denial or Allowance. The Chief of Police, or his designee, Department shall have the authority to revoke such permit when he believes such loudspeaker or amplifying device is becoming a nuisance because of the volume, the method in which it is being used or the location in which it is being operated.
 - (3) Time Restrictions. The Chief of the Police Department shall not grant a permit to use a loudspeaker or amplifying device before the hours of 7:00 a.m. or after Midnight. No permit shall be granted to anyone who, in the opinion of the Chief of Police, uses said loudspeaker or amplifying device in such a manner or for such a purpose as to constitute a nuisance.

SEC. 11-2-6 DISORDERLY CONDUCT. (Repealed and Recreated 10/11/2011, Ord. RC-308)

- (a) **Disorderly Conduct Prohibited.** No person within the City of Delavan shall:
- (1) In any public or private place engage in violent, noisy, riotous, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to cause or provoke an immediate disturbance of public order or tends to annoy or disturb any other person.
 - (2) Intentionally cause, provoke or engage in any fight, brawl, riot or noisy altercation.
 - (3) Except that a person may not be in violation of this ordinance for loading, carrying or going armed with a firearm, whether loaded or unloaded, concealed or openly carried, unless other facts and circumstances indicate the criminal or malicious intent of that person
- (b) **Defecating or Urinating in Public Places.** It shall be unlawful for any person to defecate or urinate outside of designed sanitary facilities, upon any sidewalk, street, alley, public parking lot, park, playground, cemetery or other public area within the City, or upon any private property in open view of the public, or in the halls, rooms without restroom facilities, stairways or elevators of public or commercial buildings, or to indecently expose his person.

SEC. 11-2-7 POSSESSION OF CONTROLLED SUBSTANCES.

(a) **Controlled Substances.** It shall be unlawful for any person to possess a controlled substance contrary to the Uniform Controlled Substances Act, Chapter 961 of the Wisconsin Statutes.

(b) **Possession of Marijuana.**

(1) **Definitions.** For the purpose of this Section, the following definitions shall apply:

a. "Marijuana" means all parts of the plant *Cannabis Sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

b. "Practitioner" means:

1. A physician, dentist, veterinarian, podiatrist, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this City.

(2) **Restrictions.** It is unlawful for any person to possess and/or use marijuana, unless the marijuana was obtained directly from, or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by Chapter 961, Wis. Stats.

State Law Reference: Chapter 961, Wis. Stats

SEC. 11-2-8 SYNTHETIC CANNABINOID PROHIBITED. (Created 3/6/2011, Ordinance RC-302), (Repealed and recreated 01-13-15, Ordinance RC-350)

(a) - Definitions.

As used in this article the following terms shall be defined as follows:

Incense shall mean any loose leaf incense, herbal incense, granular incense or aromatic plant material containing any chemical compound, synthetic or natural, which imitates the effects of any controlled substance in granular, loose leaf or powder form which may be used or converted into a form intended for introduction into the human body.

Synthetic cannabinoids shall mean, unless specifically excepted or unless listed in state statute, any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found to be in any of the following chemical groups or any of those groups which contain any synthetic cannabinoid salts, isomers, or salts of isomers, whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical groups:

(1) Naphthoylindoles: any compound containing a 3-(1-naphthoyl)indole structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent or whether or not substituted on the naphthyl group to any extent. Naphthoylindoles include, but are not limited to, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200); 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201), 1-pentyl-3-(1-naphthoyl)indole (JWH-018), and 1-butyl-3-(1-naphthoyl)indole (JWH-073).

(2) Naphthylmethylindoles: any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent or whether or not substituted on the naphthyl group to any extent. Naphthylmethylindoles include, but are not limited to, (1-pentylindol-3-yl)(1-naphthyl)methane (JWH-175).

- (3) Naphthoypyrroles: any compound containing a 3-(1-naphthoypyrrole) structure with or without substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the pyrrole ring to any extent or whether or not substituted on the naphthyl group to any extent. Naphthoypyrroles include, but are not limited to, 1-hexyl-2-phenyl-4-(1-naphthoypyrrole) (JWH-147).
- (4) Naphthylmethylindenes: any compound containing a naphthylmethylideneindene structure with or without substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indene group to any extent or whether or not substituted on the naphthyl group to any extent. Naphthylmethylindenes include, but are not limited to, (1-[(3-pentyl)-1H-inden-1-ylidene)methyl]naphthalene (JWH-176).
- (5) Phenylacetylindoles: any compound containing a 3-phenylacetylindole structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent or whether or not substituted on the phenyl group to any extent. Phenylacetylindoles include, but are not limited to, 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250), and 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole (RCS-8); 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH-203).
- (6) Cyclohexylphenols: any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with or without substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the cyclohexyl group to any extent. Cyclohexylphenols include, but are not limited to, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (some trade or other names: CP-47,497) and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (some trade or other names: cannabicyclohexanol; CP-47,497 C8 homologue).
- (7) Benzoylindoles: any compound containing a 3-(1-naphthoypyrrole)indole structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent or whether or not substituted on the phenyl group to any extent. Benzoylindoles include, but are not limited to, 1-pentyl-3-(4-methoxybenzoyl)indole (RCS-4), 1-[2-(4-morpholinyl)ethyl]-2-methyl-3-(4-methoxybenzoyl)indole (Pravadoline or WIN 48, 098).
- (8) Any other chemical compounds subsequently adopted by the Drug Enforcement Agency as hazardous substances.
- (b) Declaration of synthetic cannabinoids and incense as a public nuisance.
 It is hereby declared by the City of Delavan that the use, possession, sale or display of all forms of synthetic cannabinoids and incense as defined herein, is a public nuisance which poses an immediate threat to the public health and safety of the citizens of the City of Delavan.

(c) Possession, use, sale or display of synthetic cannabinoids or incense.

(1) Pursuant to the declaration as a public nuisance of all forms of synthetic cannabinoids and incense as defined by this section, the following activities shall [be] deemed a violation punishable by a forfeiture as established within this section:

- a. To appear or be upon or in any street, alley, place of business, or other public place while under the influence of synthetic cannabinoids or incense;
- b. To use, have, or possess synthetic cannabinoids/incense upon or in any street, alley, place of business, or other public place within the city;
- c. To use synthetic cannabinoids or incense in any place within the city; or
- d. To sell, display or otherwise transfer synthetic cannabinoids or incense, as defined by this section, within the city.

(2) Factors that may be considered in determining a violation: In determining whether a product or sale is prohibited by this article, statements on package labeling such as "not for human consumption" shall not be considered conclusive for purpose of determining whether a violation has occurred when other relevant factors (viewed alone or in totality) indicate that the product is intended to be consumed or ingested by humans, or is a product regulated by this article. Other relevant factors that may be used to determine whether a product or sale is prohibited by this section include, but are not limited to: verbal or written representations at the point of sale regarding the purpose, methods, use, or effect of the product; aspects of the packaging or labeling suggest the user will achieve a "high," euphoria, relaxation, mood enhancement, or that the product has other effects on the body; the cost of the product is disproportionately higher than other products marketed for the same use; the product contains a warning label stating or suggesting that the product is in compliance with state laws regulating controlled substances; the product's name or packaging uses images or slang referencing an illicit street drug; illicit or underground methods of sale or delivery are employed by the seller or provider; the product resembles an illicit street drug such as cocaine, methamphetamine, or marijuana.

(d) Enforcement. Any violation of this article may be enforced by any law or code enforcement officer of the city. Any incense or synthetic cannabinoid, as defined by the article, may be seized and held by the city as evidence to be used in any further proceeding.

(e) Penalty for Violation. A person charged with a violation of this article shall upon first conviction be punished by a forfeiture of \$100.00. Upon second conviction the person shall be punished by a forfeiture of \$300.00. Upon a third and subsequent conviction, the person shall be punished by a forfeiture of \$500.00.

SEC. 11-2-9 PROHIBITED POSSESSION OF VAPING DEVICE PRODUCTS UNDER THE AGE OF 18

- (a) Purpose. This section is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of the City of Delavan.
- (b) Definition. For the purposes of this section, the term, "Vaping Device Product" means any noncombustible product, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form including but not limited to an electronic cigarette, electronic cigarillo, electronic pipe, vaporizers, or similar products or devices. "Vaping Device Product" shall include any vapor cartridge,

solution or other container, that may or may not contain nicotine, that is intended to be used with an electric cigarette, electronic cigar, electronic cigarillo, electronic pipe, vaporizers, or similar products or devices. "Vaping Device Product" does not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

- (c) Possession. No Person under the age of 18 years may possess electronic nicotine delivery systems (ENDS) or any of their components or parts. Components or parts of ENDS include e-liquids, cartridges, atomizers, cartomizers, and clearomizers, tank systems, drip tips, and flavoring for ENDS. ENDS include what are commonly referred to as vapes, vaporizers, vape pens, hookah pens, electronic cigarettes, e- cigarettes, e- cigs, and e-pipes, which produce an "e-liquid" which may contain nicotine as well as other compositions. ENDS includes, but is not limited to, ENDS and their components and parts regulated by the Federal Drug Administration, under rules set forth in the Federal Register, 81 FR 28973.
- (d) Enforcement. Any violation of this article may be enforced by any law or code enforcement officer of the City. Any vaping device, as defined by this section, may be seized and held by the City as evidence to be used in any further proceeding.
- (e) Penalty for Violation. A person charged with a violation of this section shall upon first conviction be punished by a forfeiture of \$200.00. Upon second conviction the person shall be punished by a forfeiture of \$600.00. Upon a third and subsequent conviction, the person shall be punished by a forfeiture of \$1000.00.

CHAPTER 3

Offenses Against Property

11-3-1	Destruction of Property Prohibited
11-3-2	Littering Prohibited
11-3-3	Abandoned Appliances Prohibited
11-3-4	Theft of Library Material
11-3-5	Retail Theft
11-3-6	Issuance of Worthless Checks
11-3-7	Open Cisterns, Wells, Basements or Other Dangerous Excavations Prohibited
11-3-8	Damaging or Tampering with Coin Machines
11-3-9	Graffiti Prevention, Prohibition and Control (Created 7-8-97, Ordinance RC-9)

SEC. 11-3-1 DESTRUCTION OF PROPERTY PROHIBITED.

- (a) **Destruction of Property.** No person shall willfully injure or intentionally deface, destroy or unlawfully remove, take or meddle with any property of any kind or nature within the City of Delavan and belonging to the City or its departments, or to any private person, without the consent of the owner or proper authority.
- (b) **Parental Liability.** Pursuant to Sec. 895.035, Wis. Stats., the parents of an unemancipated minor shall be liable for the damage of property caused by the willful, malicious or wanton act of such child; such liability shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00).
- (c) **Unlawful Removal of Property.** It shall be unlawful for any person to intentionally take and carry away the property of another without the owner's consent.

SEC. 11-3-2 LITTERING PROHIBITED.

- (a) **Littering Prohibited.** No person shall throw any glass, refuse or waste, filth or other litter upon the streets, alleys, highways, public parks or other property of the City, or upon property within the City owned by any private person, or upon the surface of any body of water within the City.
- (b) **Litter From Conduct of Commercial Enterprise.**
 - (1) Scope. The provisions of this Subsection shall apply to all sales, promotions and other commercial ventures that result in litter being deposited on any street, alley or other public way.
 - (2) Litter to be cleaned up. Any person, firm, corporation or association carrying on an enterprise that results in litter being deposited on any street, alley or other public way shall clean up the same within twelve (12) hours of the time the same is deposited. If any such litter is subject to being blown about, it shall be picked up immediately. If any such litter is likely to attract animals or vermin, such litter shall be picked up immediately.
 - (3) Litter picked up at litterer's expense. If any person, firm, corporation or association fails to pick up any litter as required by Subsection (b)(1) within the time specified, the City shall arrange to have the same picked up by City crews or by private enterprise. The entire expense of picking up such litter, together with an additional charge of twenty percent (20%) for administrative expenses, shall be charged to the person, firm, corporation or association that did the littering. This charge shall be in addition to any forfeiture or other penalty for violation of this Section.

- (c) **Depositing of Materials Prohibited.** It shall be unlawful for any person to deposit, cause or permit to be deposited, placed or parked any vegetation, grass, leaves, foliage, earth, sand, gravel, water, snow, ice, debris, waste material, foreign substance, construction materials, equipment or object upon any street, sidewalk gutter, or public property without authorization of the Director of Public Works pursuant to the provisions of this Code of Ordinances, or upon any private property without the consent of the owner or lessee of the property. Any authorized person who deposits, causes or permits to be deposited, placed or parked any such materials, equipment or objects upon any street, sidewalk or property shall be responsible to properly mark or barricade the area so as to prevent a safety hazard.
- (d) **Handbills; Scattering Prohibited.** It shall be unlawful to deliver any handbills or advertising material to any premises in the City except by being handed to the recipient, placed on the porch, stoop or entrance way of the building or firmly affixed to a building so as to prevent any such articles from being blown about, becoming scattered or in any way causing litter.

SEC. 11-3-3 ABANDONED APPLIANCES PROHIBITED.

No person shall leave or permit to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, dwelling or other structure under his control in a place accessible to children any abandoned, unattended or discarded ice box, refrigerator appliance or other container which has an airtight door or lid, snap lock or other locking device which may not be released from the inside without first removing said door or lid, snap lock or other locking device from said ice box, refrigerator or container, unless such container is displayed for sale on the premises of the owner or his agent and is securely locked or fastened.

SEC. 11-3-4 THEFT OF LIBRARY MATERIAL.

- (a) **Definitions.** For the purposes of this Section, certain words and terms are defined as follows:
 - (1) Archives. A place in which public or institutional records are systematically preserved.
 - (2) Library. Means any public library, library of an educational or historical organization or society or museum, and specifically the Aram Public Library of the City of Delavan.
 - (3) Library Material. Includes any book, plate, picture photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microform, sound recording, audiovisual materials in any format, magnetic or other tapes, electronic data processing records, or other tapes, artifacts or other documents, written or printed materials, regardless of physical form of characteristics, belonging to, on loan to or otherwise in the custody of a library.
- (b) **Possession Without Consent Prohibited.** Whoever intentionally takes and carries away, transfers, conceals or retains possession of any library material without the consent of a library official, agent or employee and with intent to deprive the library of possession of the material may be subject to a forfeiture as provided by the general penalty provisions of this Code. The failure to return library material after its proper return date, after written notice from the library and Police Department, shall be deemed to be theft. Notice shall be considered given when written notice is mailed to the last-known address of the person with the overdue material; the notice date shall be the date of mailing.
- (c) **Concealment.** The concealment of library material beyond the last station for borrowing library material in a library is evidence of intent to deprive the library of possession of the material. The discovery of library material which has not been borrowed in accordance with the library's procedures or taken with consent of a library official, agent or employee and which is concealed upon the person or among the belongings of another is evidence of intentional concealment on the part of the person so concealing the material.

- (d) **Detention Based on Probable Cause.** An official or adult employee or agent of a library who has probable cause for believing that a person has violated this Section in his or her presence may detain the person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer or to the person's parent or guardian in the case of a minor. The detained person shall be promptly informed of the purpose of the detention and be permitted to make telephone calls, but shall not be interrogated or searched against his or her will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. Compliance with this Section entitles the official, agent or employee effecting the detention to the same defense in any action as is available to a peace officer making an arrest in the line of duty.
- (e) **Damaging Material Prohibited.** No person shall mar, deface or in any other way damage or mutilate any library material.
- (f) **Return Demanded.** No person shall fail, on demand, to return any library material when such demand has been made in accordance with the rules and regulations duly made and adopted by the library.

State Law Reference: Section 943.61, Wis. Stats.

SEC. 11-3-5 RETAIL THEFT.

- (a) Whoever intentionally alters indicia of price or value of merchandise or takes and carries away, transfers, conceals or retains possession of merchandise held for resale by a merchant without consent and with intent to deprive the merchant permanently of possession or the full purchase price may be penalized as provided in Subsection (d).
- (b) The intentional concealment of unpurchased merchandise which continues from one floor to another or beyond the last station for receiving payments in a merchant's store is evidence of intent to deprive the merchant permanently of possession of such merchandise without paying the purchase price thereof. The discovery of unpurchased merchandise concealed upon the person or among the belongings of another is evidence of intentional concealment on the part of the person so concealing such goods.
- (c) A merchant or merchant's adult employee who has probable cause for believing that a person has violated this Section in his presence may detain such person in a reasonable manner for a reasonable length of time to deliver him to a peace officer, or to his parent or guardian if a minor. The detained person must be promptly informed of the purpose for the detention and may make phone calls, but he shall not be interrogated or searched against his will before the arrival of a police officer who may conduct a lawful interrogation of the accused person.

Compliance with this Subsection entitles the merchant or his employee affecting the detention to the same defense in any action as is available to a peace officer making an arrest in the line of duty.

State Law Reference: Section 943.50, Wis. Stats.

SEC. 11-3-6 ISSUANCE OF WORTHLESS CHECKS.

- (a) Whoever issues any check or other order for the payment of money not exceeding One Thousand Dollars (\$1,000.00) which, at the time of issuance, he or she intends shall not be paid is guilty of a violation of this Section.

- (b) Any of the following is prima facie evidence that the person at the time he or she issued the check or other order for payment of money intended it should not be paid:
 - (1) Proof that, at the time of issuance, the person did not have an account with the drawee; or
 - (2) Proof that, at the time of issuance, the person did not have sufficient funds or credit with the drawee and that the person failed within five (5) days after receiving notice of non-payment or dishonor to pay the check or other order; or
 - (3) Proof that, when presentment was made within a reasonable time, the person did not have sufficient funds or credit with the drawee and the person failed within five (5) days after receiving notice of non-payment or dishonor to pay the check or other order.
- (c) This Section does not apply to a post-dated check or to a check given in past consideration, except a payroll check.

SEC. 11-3-7 OPEN CISTERNS, WELLS, BASEMENTS OR OTHER DANGEROUS EXCAVATIONS PROHIBITED.

No person shall have or permit on any premises owned or occupied by him any open cisterns, cesspools, wells, unused basements, excavations or other dangerous openings. All such places shall be filled, securely covered or fenced in such manner as to prevent injury to any person and any cover shall be of a design, size, and weight that the same cannot be removed by small children. The Director of Public Works, or his designee, shall enforce this Section and establish time for compliance.

SEC. 11-3-8 DAMAGING OR TAMPERING WITH COIN MACHINES.

- (a) No person shall, without lawful authority, open, remove, or damage any coin machine, coin telephone, or other vending machine dispensing goods, money, or services, or a part thereof, or possess a key or device specifically designed to open or break any coin machine, coin telephone, or other vending machine dispensing goods or services, or possess a drawing, print or mold of a key or device specifically designed to open or break any coin machine, coin telephone, or other vending machine dispensing goods or services within the limits of the City.
- (b) In this Section, coin machine means any device or receptacle designed to receive money or anything of value. The term includes, but shall not be limited to, a depository box, parking meter, vending machine, pay telephone, money-changing machine, coin-operated phonograph, and amusement machine if they are designed to receive money or other thing of value

SEC. 11-3-9 GRAFFITI PREVENTION, PROHIBITION AND CONTROL (Created 7-8-97, Ordinance RC-9)

Subsections:

- 1. Definitions
- 2. Prohibited Conduct
- 3. Penalty for Violations
- 4. Trust Fund
- 5. Severability

1. **Definitions.**

For the purposes of this Chapter, the following words shall have the meanings respectively ascribed to them in this Section, except where the context clearly indicates a different meaning:

“Aerosol paint container” means any aerosol container that is adapted or made for the purpose of applying spray paint or other substances capable of defacing property;

“Broad-tipped marker” means any felt tip indelible marker or similar implement with a flat or angled writing surface that, at its broadest width, is greater than one-fourth of an inch, containing ink or other pigmented liquid that is not water soluble;

“Etching equipment” means any tool, device, or substance that can be used to make permanent marks on any natural or man-made surface;

“Graffiti” means any inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement. The Common Council has determined that graffiti is detrimental to the public health, safety and general welfare and constitutes a public nuisance;

“Graffiti implement” means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface;

“Paint stick” or “graffiti stick” means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth of an inch in width; and

“Spray tips” means the nozzle or spray cap of any type of aerosol can. These tips can be interchanged on spray cans to achieve different paint pattern effects.

2. **Prohibited Conduct.**

A. Defacement. It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any City-owned property or on any non City-owned property.

B. Possession of Graffiti Implements Designated in Public Places. It shall be unlawful for any person to possess any graffiti implement, with the intent to apply graffiti or participate in the application of graffiti, while in or upon any public facility, park, playground, swimming pool, recreational facility, or other public building or structure owned or operated by the city, county, state or school district, or while in or within fifty feet of an underpass, bridge abutment, storm drain, or similar types of infrastructure.

3. **Penalty for Violations.**

A. Forfeitures. Any person violating this Chapter shall be punished by a forfeiture not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000.000).

1. In the case of a minor, the parents or legal guardians of the minor shall be held liable with the minor for payment of all forfeitures; and

2. Failure of the parents or legal guardians of a minor to make payment may result in the filing of a lien, special charge or special assessment on the parents’ or legal guardians’ real property that includes the forfeiture and costs.

B. **Assessment of Costs.** Any person violating this Chapter shall be required to pay restitution to reimburse the City and the private property owner for any and all costs incurred by the City and private property owner related to the abatement of graffiti caused by the violator, including but not limited to labor, materials, repair and all other work reasonably necessary to abate the graffiti caused by the person violating this Chapter.

C. The parents or legal guardians of any minors found to have violated this Chapter shall be responsible for the payment of costs assessed under this Chapter to the fullest extent allowed by Wis. Stat. 895.035.

4. Trust Fund.

The Common Council hereby creates the City of Delavan Anti-Graffiti Trust Fund. Fifty percent (50%) of all forfeiture penalties assessed against violators of this Chapter shall be placed in the Trust, along with any monetary donations received from persons wishing to contribute to the fund. The Common Council shall direct the expenditures of monies in the fund. Such expenditures shall include, but shall not be limited to, the payment of the cost of graffiti removal, the payment of rewards for information leading to the conviction for violation of this graffiti prevention ordinance, the costs of administering the graffiti prevention ordinance and such other public purposes as may be approved by the Common Council.

5. Severability.

The provisions of any part of this Section 11-3-9 are severable. If any provision or Subsection hereof or the application thereof to any person or circumstance is held invalid, the other provisions, Subsections and application of this Section to other persons or circumstances shall not be affected thereby. It is the intent of this Section that the same would have been adopted had such invalid provisions, if any, not been included herein.

CHAPTER 4

Offenses Involving Alcoholic Beverages

- 11-4-1 Outside Consumption (Amended 02/10/2004 by RC-177) (Amended 6-09-2015, Ord. RC-357)
11-4-2 Solicitation of Drinks Prohibited

SEC. 11-4-1 OUTSIDE CONSUMPTION.

(a) **Alcoholic Beverages in Public Areas.**

- (1) Regulations. It shall be unlawful for any person to sell, serve or give away, or offer to sell, serve or give away, any alcoholic beverage upon any public street, sidewalk, alley, public parking lot, highway, cemetery or drives or other public area within the City or on private property without the owner's consent, except at licensed premises. It shall be unlawful for any person to consume or have on or about his person any open container containing alcohol beverage upon any public street, public sidewalk, public way, public alley or public parking lot within the City except as licensed premises.
- (2) Private Property Held Out For Public Use. It shall be unlawful for any person to consume or have on or about his person any open container containing any alcohol beverages upon any private property held open for public use within the City unless the property is specifically named as being part of a licensed premises.
- (3) Leaving Licensed Premises With Open Container.
 - a. It shall be unlawful for any licensee, permittee or operator to permit any patron to leave the licensed premises with an open container containing any alcohol beverage.
 - b. It shall be unlawful for any patron to leave a licensed premises with an open container containing any alcohol beverage.
- (4) Outside Consumption in Parks. No person shall consume, possess, or have on or about their person any fermented malt beverages, intoxicating liquor, or other intoxicant while in any park, inclusive of the Mill Pond swimming beach, the recreational building, and that portion of Wileman Park leased to the City by the School District of Delavan-Darien. Exemptions from this provision:
 - a. Delbrook Golf Course for the consumption of fermented malt beverages.
 - b. Parks as provided for in Title 12-1-6(p) (Amended 6-09-2015, Ord. RC-357)
- (5) Exceptions.
 - a. The provisions of this Section may be waived by the Common Council for duly authorized events.
 - b. Any organization which has been issued a special Class "B" fermented malt beverage picnic license pursuant to this Code of Ordinances, provided that the provisions of this Chapter and Title 7, Chapter 2, are fully complied with.

(b) **Definitions.**

- (1) As used in this Section, the term "alcoholic beverage" shall include all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented, or not, and by whatever name called, as well as all liquors and liquids made by the alcoholic fermentation of an infusion in potable water of barley malt and hops, with or without unmelted grains or decorticated or degerminated grains or sugar, which contain one-half (1/2) of one percent (1%) or more of alcohol by volume and which are fit for use for beverage purposes.

Offenses Involving Alcoholic Beverages

- (2) As used in this Section, the term "public area" shall be construed to mean any location within the City which is open to access to persons not requiring specific permission of the owner to be at such location including all parking lots serving commercial establishments.
- (3) As used in this Chapter "underage person" shall mean any person under the legal drinking age as defined by the Wisconsin Statutes.

Cross-Reference: Section 7-2-16.

SEC. 11-4-2 SOLICITATION OF DRINKS PROHIBITED.

Any licensee, permittee or bartender of a retail alcohol beverage establishment covered by a license or permit issued by the City who permits an entertainer or an employee to solicit a drink of any alcohol beverage defined in Section 125.02(1) of the Wisconsin Statutes, or any other drink from a customer on the premises, or any entertainer or employee who solicits such drinks from any customer is deemed in violation of this Section.

CHAPTER 5

Offenses by Juveniles

11-5-1	Curfew
11-5-2	City Jurisdiction Over Persons 14 through 17 Years of Age
11-5-3	Truancy/Habitual Truancy (repealed and recreated 10/13/98 Ordinance RC-54) (Amended and Recreated 9-16-08, RC-253)
11-5-4	Enforcement and Penalties (repealed and recreated 10/13/98 Ordinance RC-54)
11-5-5	Parental Responsibility for Misconduct of Minors (repealed and recreated 10/9/07 Ordinance RC-235) (Amended 05-13-2008 Ord RC-248)

SEC. 11-5-1 CURFEW.

- (a) **Curfew Established.** It shall be unlawful for any person seventeen (17) years of age or under to be on foot, bicycle or in any type of vehicle on any public street, avenue, highway, road, alley, park, school grounds, swimming beach, cemetery, playground, public building or any other public place in the City of Delavan between the hours of 11:00 p.m. and 6:00 a.m., unless accompanied by his or her parent or guardian, or person having delegated authority and control of his or her person, or unless there exists a reasonable necessity therefor. The fact that said child, unaccompanied by parent, guardian or other person having legal custody is found upon any such public place during the aforementioned hours shall be prima facie evidence that said child is there unlawfully and that no reasonable excuse exists therefor.
- (b) **Exceptions.**
- (1) This Section shall not apply to a child, or a child returning by the shortest route:
 - a. Who is performing an errand as directed by his parent, guardian or person having delegated authority.
 - b. Who is on his own premises or in the areas immediately adjacent thereto.
 - c. Whose employment makes it necessary to be upon the streets, alleys or public places or in any motor vehicle during such hours.
 - d. Who is returning home from a supervised school, church or civic function.
 - (2) These exceptions shall not, however, permit a child to loiter about the streets, alleys or public places or be in a parked motor vehicle on the public streets.
- (c) **Parental Responsibility.** It shall be unlawful for any parent, guardian or other person having the lawful care, delegated authority and control of any person seventeen (17) years of age or under to allow or permit such person to violate the provisions of (a) or (b) above. The fact that prior to the present offense a parent, guardian or custodian was informed by any law enforcement officer of a separate violation of this Section occurring within thirty (30) days of the present offense shall be prima facie evidence that such parent, guardian or delegated authority allowed or permitted the present violation. Any parent, guardian or delegated authority herein who shall have made a missing person notification to the police department shall not be considered to have allowed or permitted any person seventeen (17) years of age or under to violate this Section.
- (d) **Taking a Child Into Custody**
- (1) Every law enforcement officer while on duty is hereby authorized to take into custody any child violating the provisions of Subsection (a) above. Children taken into custody shall be released from custody as soon as is reasonably possible. A person taking a child into custody shall make every effort immediately to release the child to the child's parent, guardian, or legal custodian or, if the parent, guardian, or delegated authority is unavailable, unwilling, or unable to provide supervision for the child, may release the child to a responsible adult and verbally counsel or warn as may be appropriate or, in the case of a runaway child, may release the child to a home authorized under Sec. 48.207, Wis. Statutes. The parent, guardian, legal custodian, or other responsible adult to whom the child is released shall sign a release for the child.

- (2) If the child is not released under this Subsection, the officer shall deliver the child to the Walworth County Juvenile Court Intake Worker in a manner determined by the court and law enforcement agencies, stating in writing with supporting facts the reasons why the child was taken into physical custody and giving any child twelve (12) years of age or older a copy of the statement in addition to giving a copy to the Intake Worker. A juvenile violating these curfews regularly may be warned by an officer on duty in his discretion and sent home in lieu of taking the juvenile into custody.
 - (3) If the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the officer shall take such action as is required under Sec. 48.20(4), Wis. Stats. If the child is believed to be mentally ill, drug dependent, or developmentally disabled and exhibits conduct which constitutes a substantial risk of physical harm to the child or to others, the officer shall take such action as is required under Sec. 48.20(5), Wis. Stats. If the child is believed to be an intoxicated person who has threatened, attempted, or inflicted physical harm on himself or herself or on another and is likely to inflict such physical harm unless committed or is incapacitated by alcohol, the officer shall take such action as is required under Sec. 48.20(6). Wis. Stats.
- (e) **Warning and Penalty.**
- (1) Warning. The first time a parent, guardian, or person having delegated authority of a child who is taken into custody by a law enforcement officer as provided in Subsection (d) above, such parent, guardian, or person having such delegated authority shall be advised as to the provisions of this Section and further advised that any violation of this Section occurring thereafter by this child or any other child under his or her care or custody shall result in a penalty being imposed as hereinafter provided.
 - (2) Penalty. Any parent, guardian, or person having delegated authority of a child described in Subsection (a) above who has been warned in the manner provided in Subsection (d)(1) herein and who thereafter violates this Section shall be subject to a penalty as provided in Section 1-1-7 of this Code of Ordinances. After a second violation within a six (6) month period, if the defendant, in a prosecution under this Section, proves that he or she is unable to comply with this Section because of the disobedience of the child, the action shall be dismissed and the child shall be referred to the court assigned to exercise jurisdiction under Chapter 48, Wis. Stats. Any minor person under sixteen (16) years of age who shall violate this Section shall, upon conviction thereof, forfeit not less than One Dollar (\$1.00) nor more than Twenty-five Dollars (\$25.00), together with the costs of prosecution.

SEC. 11-5-2 CITY JURISDICTION OVER PERSONS 12 THROUGH 17 YEARS OF AGE.

- (a) **Adoption of State Statute.** Section 938.17(2), Wis. Stats., is hereby adopted and by reference made a part of this Section as if fully set forth herein.
- (b) **Provisions of Ordinance Applicable to Persons 12 through 17 Years of Age.** Subject to the provisions and limitations of Section 938.17(2), Wis. Stats., complaints alleging a violation of any provision of this Code of Ordinances against persons 12 through 17 years of age may be brought on behalf of the City of Delavan and may be prosecuted utilizing the same procedures in such cases as are applicable to adults charged with the same offense.
- (c) **No Incarceration as Penalty.** The Court shall not impose incarceration as a penalty for any person convicted of an offense prosecuted under this Section.
- (d) **Additional Prohibited Acts.** In addition to any other provision of the City of Delavan Code of Ordinances, no person age 12 through 17 shall own, possess, ingest, buy, sell, trade, use as a beverage, give away or otherwise control any intoxicating liquor or fermented malt beverage in violation of Chapter 125, Wis. Stats.

- (e) **Penalty for Violations of Subsection (d).** Any person 12 through 17 years of age who shall violate the provisions of Subsection (d) shall be subject to the same penalties as are provided in Section 1-1-7 of these Ordinances exclusive of the provisions therein relative to commitment in the County Jail.

SEC. 11-5-3 TRUANCY/HABITUAL TRUANCY. (Repealed and Recreated 10/13/98 Ordinance RC-54) (Repealed and Recreated 02/13/01 Ordinance RC-108) (Amended and Recreated 9-16-08, RC-253)

Prohibition of Truancy. The City, by this section, does prohibit any student within its jurisdiction from being either *truant* or *habitually truant*, as those terms are defined in this section. The City of Delavan Police Department is authorized to issue a municipal citation to any such student found within its jurisdiction who is determined to be *truant* or *habitually truant* under the terms of this section.

- (1) **Authority.** The authority of adoption of this section of the code is Section 118.163, Wis. Stats.
- (2) **Definitions.**
- (a) "Habitual Truant" means a person who is absent from school without an acceptable excuse under Sections 118.16(4) and 118.15, Wis. Stats. for part or all of 5 or more days on which school is held during a school semester.
 - (b) "Acceptable Excuse" has the meaning as defined in Sections 118.15 and 118.16(4), Wis. Stats.
 - (c) "School Attendance Officer" means any employee designated by the school board to deal with matters relating to school attendance and truancy.
 - (d) "Truancy" means any absence of part or all of one or more days from school which the school attendance officer, principal or teacher has not been notified of the legal cause of such absence by the parent or guardian of the absent pupil, and also means intermittent attendance carried on for the purpose of defeating the intent of this section or Section 118.15, Wis. Stats.
 - (e) "Operating Privilege" has the meaning given in Section 340.1(40), Wis. Stats.
 - (f) "Truant" means a pupil who is absent from school without an acceptable excuse under Sections 118.15 and 118.16(4), Wis. Stats. for part or all of any day which school is held during a school semester.
- (3) **Truancy Penalties.** Upon finding that a Child is *TRUANT*, the Court shall enter an order making one or more of the following dispositions;
- (a) Order the child to attend school.
 - (b) Order a forfeiture of no more than \$50.00 plus costs for a first violation, or a forfeiture of not more than \$100.00 plus cost for any second or subsequent violation committed within 12 months of a previous violation, subject to Section 938.37 and subject to a maximum cumulative forfeiture amount of not more than \$500.00 for all violations committed during a school semester. All or part of the forfeiture plus cost may be assessed against the child, parents or guardian of the child or both.
- (4) **Habitual Truant Penalties.** Upon finding that a child is *HABITUAL TRUANT*, the Court shall enter an order making one or more of the following dispositions;
- (a) Suspend the child's operating privilege, as defined in Section 340.01 (40), Wis. Stats. for not less than 30 days or more than one year. The judge shall immediately take possession of the suspended license and forward it to the Department of Transportation of the State of Wisconsin, together with a notice stating the reason for, and duration of the suspension.
 - (b) Order the child to participate in counseling, community service work or a supervised work program. The cost of any such counseling, community service work, or supervised work program may be assessed against the child, the child's parent or guardian, or both.

- (c) Order the child to remain at home, except during the hours in which the child is attending religious worship or school program, including travel time required to get to and from the school program or place of worship. The child may be permitted to leave his/her home if the child is accompanied by a parent or guardian.
 - (d) Order the child to attend an educational program as described in Section 938.34(7d), Wis. Stats.
 - (e) Order the Department of Workforce Development to revoke, under Section 103.72, Wis. Stats., a permit under Section 103.70, Wis. Stats, authorizing the employment of the child.
 - (f) Order the child to be placed in a teen court program as described in Section 938.342(1g)(f) Wis. Stats.
 - (g) Order the child to attend school.
 - (h) Order a forfeiture of not more than \$500.00 plus costs, subject to Section 938.37, Wis. Stats. All or part of the forfeiture plus costs may be assessed against the child, the parents or guardian or both.
 - (i) Order the child to be placed under formal or informal supervision as described in Section 938.34(2) Wis. Stats., for up to one year.
 - (j) Order the child's parent or guardian to participate in counseling at the parents or guardian's own expense, or to attend school with the child or both.
 - (k) Order any other reasonable conditions consistent with this subsection including a curfew, restrictions as to going to or remaining on specified premises, and restriction on associating with other children or adults.
- (5) ***Contributing to Truancy;***
- (a) Except as provided in subsection (5)(b), below, any person 17 years of age or older, who, by any act or omission, knowingly encourages or contributes to the truancy, as defined under 118.16(1)(c) Wis. Stats., of a person, 17 years of age or under is guilty of a violation of this section.
 - (b) Subsection (5)(a) does not apply to a person who has under his or her control a child who has been sanctioned under Section 49.26(1)(h), Wis. Stats., as may be amended from time to time.
 - (c) An act or omission contributes to the truancy of a child whether or not the child is adjudged to be in need of protection or services, if the natural and probable consequences of that act or omission would be to cause the child to be truant.
 - (d) **Contributing to Truancy Penalty:** A person adjudged to have violated this Section shall be subject to a forfeiture of not less than \$50.00, nor more than \$500.00.
 - (e) This subsection is adopted pursuant to the authority granted by Section 66.0107(2) Wis. Stats.
- (6) ***References to Statutes.*** Any reference to Wis. Stats. in this section shall be to Wisconsin Statutes, as amended, modified or repealed by the State Legislature from time to time.

SEC. 11-5-4 ENFORCEMENT AND PENALTIES. (Repealed and recreated 10/13/98 Ordinance RC-54) (Repealed and recreated 02/13/01 Ordinance RC-103)

- (a) **Citation Process.** For violations of Sections 11-5-2 through 11-5-3, juveniles may be cited by the citation process on a form approved by the City Attorney and shall contain on the reverse side the penalties that the juvenile may receive simultaneously with issuing the citation to the juvenile. A notice will be mailed to the parent or legal guardian.
- (b) **Penalties.** Violations of Sections 11-5-2 through 11-5-5 by a person under the age of eighteen (18) shall be punishable according to the Wisconsin Statutes referred to in each such Section, as well as Sections 48.17(2), 48.343, 48.344 and 48.345 of the Wisconsin Statutes. Nothing in this Section shall prevent the law enforcement officer, in his/her discretion, from referring cases directly to Juvenile Intake.”

SEC. 11-5-5 PARENTAL RESPONSIBILITY FOR MISCONDUCT OF MINORS

- (a) **Definitions.** For the purposes of this Section:
- (1) “Child” means a person under the age of seventeen years.
 - (2) “Custodial parent” means a parent of a child who has custody of said child.
 - (3) “Custody” means either physical custody of a child under a court order under Section 767.23 or 767.24 of the Wisconsin Statutes, custody of a child under a stipulation pursuant to Section 767.10 of the Wisconsin Statutes, or actual physical custody of the child. “Custody” does not include legal custody as defined under section 48.02(12), by an agency or a person other than a child’s birth or adoptive parent. In determining which parent has custody of a child for purposes of this section, the court shall consider which parent had responsibility for caring for and supervising the child at the time that the child’s ordinance violation occurred.
- (b) **Prohibited Conduct.** Every custodial parent has a duty to properly supervise his or her child. Any custodial parent whose child is convicted of a City of Delavan Municipal Code violation twice in a six-month period or three or more within a twelve-month period is guilty of failing to properly supervise said child. The six and twelve-month periods shall be measured from the date of violation.
- (c) **Exempt Conduct.** No custodial parent shall be prosecuted under this section concerning violations by his or her child of Title 10 (Motor Vehicles and Traffic) of the City of Delavan Municipal Code. (Amended 5/13/08, Ord RC-248)
- (d) **Parent Effectiveness Training.** The first time a person is convicted of an offence described in subsection (b) of this Section, the person shall not be required to pay a fine exceeding \$100 if the person successfully participates in, and completes a court approved parent effectiveness program to the satisfaction of the court. It will be the responsibility of the defendant to locate and seek court approval before the defendant would receive credit for completing the program. (Amended 10/9/07 Ord RC-235)
- (e) **Penalty.** The offense described under Subsection (b) shall be subject to a penalty of not more than \$1,000.
- (f) **Severability.** The provisions of any part of this section are severable. If any provision of subsection hereof or the application thereof to any person or circumstance is held invalid, the other provisions, subsections, and application of this section to other persons or circumstances shall not be affected thereby. It is the intent of this section that the same would have been adopted had such invalid provisions, if any, not be included herein.

CHAPTER 6

Public Nuisances

11-6-1	Public Nuisances Prohibited
11-6-2	Public Nuisances Defined
11-6-3	Public Nuisances Affecting Health
11-6-4	Public Nuisances Offending Morals and Decency
11-6-5	Public Nuisances Affecting Peace and Safety
11-6-6	Abatement of Public Nuisances
11-6-7	Cost of Abatement

SEC. 11-6-1 PUBLIC NUISANCES PROHIBITED.

No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the City of Delavan.

SEC. 11-6-2 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 offends 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.

SEC. 11-6-3 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 definition of Section 11-6-2:

- (a) **Adulterated Food.** All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.
- (b) **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 twenty-four (24) hours after death.
- (c) **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.
- (d) **Stagnant Water.** All stagnant water in which mosquitoes, flies or other insects can multiply.
- (e) **Garbage Containers.** Garbage containers which are not fly-tight.
- (f) **Noxious Weeds.** All noxious weeds and other rank growth of vegetation
- (g) **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

- (h) **Noxious Odors, Etc.** Any use of property, substances or things within the City or within four (4) miles thereof or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, gases, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, injure or inconvenience the health of any appreciable number of persons within the City.
- (I) **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.
- (j) **Accumulations of Refuse.** Accumulations of old cans, lumber, diseased firewood and other refuse.
- (k) **Air Pollution.** The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the limits or within one (1) mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property.

SEC. 11-6-4 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 Section 11-6-2:

- (a) **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.
- (b) **Gambling Devices.** All gambling devices and slot machines, except as permitted by state law.
- (c) **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 the ordinances of the City.
- (d) **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.
- (e) **Illegal Drinking.** Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of the laws of the State of Wisconsin or ordinances of the City.

SEC. 11-6-5 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 Section 11-6-2:

- (a) **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.
- (b) **Illegal Buildings.** All buildings erected, repaired or altered in violation of the provisions of the Ordinances of the City relating to materials and manner of construction of buildings and structures within the City.
- (c) **Unauthorized Traffic Signs.** All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing which purport to be or may be mistaken as an official traffic control device railroad sign or signal or which, because of its color, location, brilliance or manner of operation, interferes with the effectiveness of any such device, sign or signal.
- (d) **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

- (e) **Tree Limbs.** All limbs of trees which project over a public sidewalk less than ten (10) feet above the surface thereof and all limbs which project over a public street less than fourteen (14) feet above the surface thereof.
- (f) **Dangerous Trees.** All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.
- (g) **Fireworks.** All sale, use, or display of fireworks except as provided by the laws of the State of Wisconsin and Ordinances of the City.
- (h) **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.
- (I) **Wires Over Streets.** All wires over streets, alleys or public grounds which are strung less than fifteen (15) feet above the surface thereof.
- (j) **Loud and Unnecessary Noise.** 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 or activities producing any type of loud or unnecessary noise.
- (k) **Obstructions of Streets: Excavations.** All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the Ordinances of the City or which, although made in accordance with such Ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished, or which do not conform to the permit.
- (l) **Open Excavations.** All open and unguarded pits, wells, excavations or unused basements accessible from any public street, alley or sidewalk.
- (m) **Flammable Liquids.** Repeated or continuous violations of the Ordinances of the City or laws of the State relating to the storage of flammable liquids.
- (n) **Unremoved Snow.** All snow and ice not removed or sprinkled with ashes, sawdust, sand or other chemical removers, as provided in this Code.
- (o) **Junked Vehicles.** The storage of junked, unlicensed or inoperable vehicles.

SEC. 11-6-6 ABATEMENT OF PUBLIC NUISANCES.

- (a) **Enforcement.** The Chief of Police, Director of Public Works, Health Officer, Building Inspector, the Chief of the Fire Department and the Common Council shall enforce those provisions of this Chapter that come within the jurisdiction of their offices, and they shall make periodic inspections and inspections upon complaint to insure 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.
- (b) **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, or City Administrator, upon the recommendation of the appropriate department head, 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.
- (c) **Abatement After Notice.** If the inspecting officer shall determine that 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 ten (10) days. If such nuisance is not removed within such ten (10) days, the proper officer shall cause the nuisance to be removed as provided in Subsection (b).
- (d) **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.

SEC. 11-6-7 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, such cost shall be assessed against the real estate as a special charge.

CHAPTER 7

SEX OFFENDERS RESIDING WITHIN 1,000 FEET OF SCHOOLS, DAYCARE CENTERS, PARKS AND OTHER SPECIFIED FACILITIES AND USES PROHIBITED; CHILD SAFETY ZONES (Adopted 11-18-2014, RC-347)

11-7-1	Purpose.
11-7-2	Definitions.
11-7-3	Residency restrictions.
11-7-4	Residency restriction exceptions.
11-7-5	Original domicile restriction.
11-7-6	Child safety zones.
11-7-7	Child safety zone exceptions.
11-7-8	Penalty.
11-7-9	Appeal for Exemption.
11-7-10	Severability.
11-7-11	Effective .

SEC. 11-7-1 PURPOSE. The Common Council finds that repeat sexual offenders who use physical violence and sexual offenders who prey on children, are sexual offenders who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses: and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

It is not the intent of the Common Council to punish sex offenders, but rather to serve the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City of Delavan by creating areas around locations where children regularly congregate in concentrated numbers, wherein, certain sexual offenders are prohibited from establishing temporary or permanent residence.

Due to the high rate of recidivism for sexual offenders, and because reducing both opportunity and temptation would help minimize the risk of re-offense, there is a compelling need to protect children where they congregate or play in public places.

SEC. 11-7-2 DEFINITIONS. As used in this Chapter and unless the context otherwise requires:

(a) "Child" means a person under the age of eighteen (18) years.

(b) A "sexually violent offense" shall have the meaning as set forth in §980.01(6), Wis. Stats. as amended from time to time.

(c) "Sex offender" shall mean: Any person who is required to register under Wis. Stats. Sec. 301.45 for any offense against a child, or any person who has been convicted of, or found not guilty by reason of mental disease or defect and placed on lifetime supervision under Wis. Stats. Sec. 971.17(1j), for the following offenses:

- (1) §940.225(1) First Degree Sexual Assault;
- (2) §940.225(2) Second Degree Sexual Assault;
- (3) §940.225(3) Third Degree Sexual Assault;
- (4) §940.22(2) Sexual Exploitation by Therapist;
- (5) §940.30 False Imprisonment-victim was minor and not the offender's child;
- (6) §940.31 Kidnapping-victim was minor and not the offender's child;
- (7) §944.01 Rape (prior statute);
- (8) §944.10 Sexual Intercourse with a Child (prior statute);
- (9) §944.06 Incest;
- (10) §944.11 Indecent Behavior with a Child (prior statute);
- (11) §944.12 Enticing Child for Immoral Purposes (prior statute);
- (12) §948.02(1) and (2) First and Second Degree Sexual Assault of a Child;
- (13) §948.025 Engaging in Repeated Acts of Sexual Assault of the Same Child
- (14) §948.05 Sexual Exploitation of a Child;
- (15) §948.055 Causing a Child to View or Listen to Sexual Activity;
- (16) §948.06 Incest with a Child;
- (17) §948.07 Child Enticement;
- (18) §948.075 Use of a Computer to Facilitate a Child Sex Crime;
- (19) §948.08 Soliciting a Child for Prostitution;
- (20) §948.095 Sexual Assault of a Student by School Instructional Staff;
- (21) §948.11(2)(a) or (am) Exposing Child to Harmful Material-felony section;
- (22) §948.12 Possession of Child Pornography;
- (23) §948.30 Abduction of Another's Child;
- (24) §971.17 Not Guilty by Reason of Mental Disease-of an included offense;
- and
- (25) §975.06 Sex Crimes Law Commitment

(d) "Permanent residence" shall mean a place where a person abides, lodges or resides for fourteen (14) or more consecutive days.

(e) "Temporary residence" shall mean a place where a person abides, lodges or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address or place where the person routinely abides, lodges or resides for a period of four (4) or more consecutive or non-consecutive days in any month and which is not the person's permanent address.

(f) "Domicile" shall mean an individual's fixed and permanent home where the individual intends to remain permanently and indefinitely and to which whenever absent the individual intends to return, except that no individual may have more than one domicile at any time. Domicile is not a residence for any special or temporary purpose.

11-7-3 RESIDENCY RESTRICTION. In absence of a Circuit Court Order specifically exempting a sexual offender from the residency restriction in this subsection, a sexual offender shall not establish a permanent or temporary residence within 1,000 feet of the real property comprising any of the following:

- (a) Any facility for children (which means a public or private school, a group home, as defined in §48.02 (7), Wis. Stats., a residential care center for children and youth, as defined in §48.02 (15d), Wis. Stats., a shelter care facility, as defined in §48.02 (17), Wis. Stats., a foster home, as defined in §48.02 (6), Wis. Stats., a day care center licensed under §48.65, Wis. Stats., a day care program established under §120.13 (14), Wis. Stats., a day care provider certified under §48.651, Wis. Stats., or a youth center, as defined in §961.01 (22), Wis. Stats.; and/or
- (b) Any facility used for:
 - (1) a public park or park facility;
 - (2) a public swimming pool;
 - (3) a public library;
 - (4) a recreational trail;
 - (5) a public playground;
 - (6) a school for children;
 - (7) athletic field used by children;
 - (8) a movie theatre;
 - (9) a daycare center;
 - (10) a ski and/or sledding hill open to the public;
 - (11) any specialized school for children, including, but not limited to a gymnastics academy, dance academy or music school;
 - (12) a public or private golf course or range; and
 - (13) aquatic facilities open to the public.

The distance shall be measured from the closest boundary line of the real property supporting the residence of a person to the closest real property boundary line of the applicable above enumerated use(s). A map depicting the above enumerated uses and the resulting residency restriction distances, as amended from time to time, shall be maintained on an official map in the Office of the City Clerk for public inspection. The City Clerk shall update the map at least annually to reflect any changes in the location of prohibited zones. These shall be designated on the map as child safety zones.

SEC. 11-7-4 RESIDENCY RESTRICTION EXCEPTIONS. A sex offender residing within a prohibited area as described in above Sec. 11-7-3 does not commit a violation of this Chapter if any of the following apply:

- (a) The person established a permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stats. Sec. 301.45, before the effective day of this section.
- (b) The person was under seventeen (17) years of age and is not required to register under Wis. Stats. Sec. 301.45 or 301.46.
- (c) The person is required to serve a sentence at a jail, juvenile facility or other correctional institution or facility.
- (d) The person is a minor or ward under guardianship.

SEC. 11-7-5 ORIGINAL DOMICILE RESTRICTION. In addition to and notwithstanding the residency restrictions set forth herein, and subject to Sec. 11-7-4 above, no sex offender shall be permitted to reside in the City of Delavan, unless such person was domiciled in the City of Delavan at the time of the offense resulting in the person's most recent conviction, commitment or placement as a sex offender as set forth in Sec. 11-7-4 above.

SEC. 11-7-6 CHILD SAFETY ZONES. No person shall enter or be present upon any real property upon which there exists any facility used for or which supports a use of:

- (1) a public park, parkland, park facility;
- (2) a public swimming pool;
- (3) a public library;
- (4) a recreational trail;
- (5) a public playground;
- (6) a school for children;
- (7) athletic field used by children;
- (8) a movie theatre;
- (9) a daycare center;
- (10) a ski and/or sledding hill open to the public;
- (11) any specialized school for children, including, but not limited to a gymnastics academy, dance academy or music school;
- (12) a public or private golf course or range; and
- (13) aquatic facilities open to the public.
- (14) any facilities for children (which means a public or private school, a group home, as defined in §48.02 (7), Wis. Stats., a residential care center for children and youth, as defined in §48.02 (15d), Wis. Stats., a shelter care facility, as defined in §48.02 (17), Wis. Stats., a foster home, as defined in §48.02 (6), Wis. Stats., a treatment foster home, as defined in §48.02 (17q), Wis. Stats., a day care center licensed under §120.13 (14), Wis. Stats., a day care provider certified under §48.651, Wis. Stats., or a youth center, as defined in §961.01 (22), Wis. Stats.).

A map depicting the locations of the real property, supporting the above enumerated uses, as amended from time to time, shall be kept on file in the Office of the City Clerk and be available for public inspection.

EXCEPTIONS. The prohibitions set forth in (a) above shall not apply where the actor was with his or her parent or other adult person having his or her care, custody or control; or the actor was exercising First Amendment rights protected by the United States Constitution, including freedom of speech, free exercise of religion and the right of assembly.

SEC. 11-7-7 CHILD SAFETY ZONE EXCEPTIONS. A person does not commit a violation of Sec. 11-7-6 above and the enumerated uses may allow such person on the property supporting such use if any of the following apply:

- (a) The property supporting an enumerated use under Sec. 11-7-6 also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:
 - (1) Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
 - (2) Written advance notice is made from the person to an individual in charge of the church and approval from an individual in charge of the church as designated by the church is made in return, of the attendance by the person; and
 - (3) The person shall not participate in any religious education programs which include individuals under the age of 18.

- (b) The property supporting an enumerated use under Sec. 11-7-6 also supports a use lawfully attended by a person's natural or adopted child(ren), which child's use reasonably requires the attendance of the person as the child's parent upon the property, subject to the following conditions:
- (1) Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and
 - (2) Written advance notice is made from the person to an individual in charge of the use upon the property and approval from an individual in charge of the use upon the property as designated by the owner of the use upon the property is made in, of the attendance by the person.
- (c) The property supporting an enumerated use under Sec. 11-7-6 also supports a polling location in a local, state or federal election, subject to the following conditions:
- (1) The person is eligible to vote;
 - (2) The designated polling place for the person is an enumerated use; and
 - (3) The person enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate; and the person vacates the property immediately after voting.
- (d) The property supporting an enumerated use under Sec. 11-7-6 also supports an elementary or secondary school lawfully attended by a person as a student, under which circumstances the person who is a student may enter upon that property supporting the school at which the person is enrolled, as is reasonably required for the educational purposes of the school.

SEC. 11-7-8 PENALTY.

- (a) A person who violates provisions of Sec. 11-7-2 and 11-7-4 above shall be subject to a forfeiture of not less than \$500.00 and no more than \$1,000.00 for each violation. Each day a violation continues shall constitute a separate offense. The City may also seek equitable relief, including an injunction to gain compliance.
- (b) Any person violating Sec. 11-7-6 of this Section shall forfeit not less than \$1,000.00 and no more than \$2,000.00 for each violation.
- (c) In addition, if a person violates Sec. 11-7-2 above, by establishing a residence or occupying a residential premises within 1,000 feet of those premises as described herein without any exception(s) as also set forth above, the City Attorney, upon referral from the Chief of Police and the written determination by the Chief of Police that upon all of the facts and circumstances and the Purpose of this Chapter, such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health, safety of another or others, shall bring an action in the name of the City in the Circuit Court for Walworth County to permanently enjoin such residency as a public nuisance.

SEC. 11-7-9 APPEAL FOR EXEMPTION. A person may seek an exemption from this ordinance by appealing to the City of Delavan General Operations Committee ("The Committee"). The Committee shall approve of an official appeal form. A person shall completely fill in the official form and submit it to the City Clerk, who shall forward it to the Committee. The Committee shall hold a hearing on each appeal, during which the Committee may review any pertinent information and may accept oral and written statements from any person. The Committee shall base its decision on whether the offender has shown remorse, has rehabilitated, could re-offend, and any other factor related to the City's interest in promoting, protecting and improving the public health, safety, and welfare of the community.

The Committee shall decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional, or limited to a certain address, or a certain period of time. A written copy of the decision shall be provided to the offender.

SEC. 11-7-10 SEVERABILITY. The provisions of this ordinance shall be deemed severable and it is expressly declared that the Common Council would have passed the other provisions of this ordinance irrespective of whether or not one or more provisions may be declared invalid. If any provision of this ordinance or the application to any person or circumstance is held invalid, the remainder of the ordinance or the application of such other provisions to other persons or circumstances shall not be affected.