

**11-3-1**

- (c) **Theft of Property or Fuel.** No person shall intentionally take and carry away, use, transfer, conceal or retain possession of movable property of another without that other person's consent and with intent to deprive the owner permanently of possession of such property. Included within the scope of theft of property is failing to pay for fuel that a person obtained from a fuel vendor.
- (d) **Penalty Provisions.**
  - (1) Any person seventeen (17) years of age or over who violates this Section is subject to a penalty as provided in Section 1-1-6, restitution to the injured party, and the costs of prosecution.
  - (2) Any person fourteen (14) years of age through sixteen (16) years of age shall be subject to a forfeiture not to exceed Twenty-five Dollars (\$25.00) and any other applicable penalty provided by Sec. 938.344, Wis. Stats., as that Section may exist, be amended or changed.
- (e) **Victim Remedies.** Any person or entity injured by a violation of this Section by a minor child shall be advised of the rights and remedies available under Sec. 895.035, Wis. Stats.

*Cross-Reference:* Section 11-3-10.

## **Sec. 11-3-2 Littering Prohibited.**

- (a) **Littering Prohibited.** No person shall throw any object, glass, refuse or waste, filth or other litter upon the streets, alleys, highways, public parks or other property of the Village of Elk Mound, upon property within the Village owned by the School District or upon any private property not owned by them, or upon the surface of any body of water within the Village.
- (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 Village shall arrange to have the same picked up by Village 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. If such sum is not promptly paid, steps shall be taken, with the advice of the Village Attorney's office, to collect the same. 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 or public property without authorization of the Village Board, Public Works Director or Clerk-Treasurer 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 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) **Improper Placement of Recyclables.** Persons shall only place recyclable objects or materials in proper recycling containers which are specifically designated for that type of material.
- (e) **Handbills.**
  - (1) **Scattering Prohibited.** It shall be unlawful to deliver any handbills or advertising material to any premises in the Village of Elk Mound 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.
  - (2) **Papers in Public Places Prohibited.** It shall be unlawful to leave any handbills, advertising material or newspapers unattended in any street, alley, public building or other public place, provided that this shall not prohibit the sale of newspapers in vending machines.

### **Sec. 11-3-3 Abandoned Refrigerators 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/her control in a place accessible to children any abandoned, unattended or discarded ice box, refrigerator 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/her 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:

**11-3-4**

- (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 public library within the Village of Elk Mound and school libraries.
  - (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.**
- (1) 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 of Ordinances.
  - (2) The failure to return library material after its proper return date, after written notice from the library 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.
  - (3) No person shall be charged with a violation of this Section unless such person is provided written notice signed by a library official, agent or employee setting forth the following:
    - a. A reasonable description of the library materials;
    - b. The date that the library materials were due to be returned;
    - c. The final date by which either the library materials are to be returned or a written explanation made to the library that the library materials are incapable of being returned because they are lost or destroyed; and
    - d. The statement that:

"Your failure to comply with the demands of this notice will subject you to being prosecuted for a violation of Section 11-3-4 of the Municipal Code of the Village of Elk Mound, 'Theft of Library Material'; and upon conviction, a penalty of not less than \$25.00 nor more than \$500.00, together with the costs of prosecution."
- Said notice shall be served by regular first class mail sent to the person's last known address or by personal service upon such person.
- (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 law enforcement 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 law enforcement 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 law enforcement 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 book, periodical, pamphlet, picture or other article or property belonging to or in charge of the library. Any person convicted of violating this Subsection shall be subject to the penalties as set forth in Section 1-1-6.
- (f) **Return Demanded.** No person shall fail, on demand, to return any book periodical, pamphlet, picture or other articles or property belonging to or in charge of the Public Library according to the rules or regulations duly made and adopted by the Library Board and no person shall remove from the library any book, periodical, pamphlet, picture or other articles or property without first having it charged as provided by such rules and regulations. Any person convicted of violating any provision of this Subsection shall be subject to the penalties as set forth in Section 1-1-6.

*State Law Reference:* Sec. 943.61, Wis. Stats.

### **Sec. 11-3-5 Damage to Public Property.**

- (a) **Damaging Public Property.** No person shall climb any tree or pluck any flowers or fruit, wild or cultivated, or break, cut down, trample upon, remove, or in any manner injure or deface, write upon, defile or ill use any tree, shrub, flower, flower bed, turf, fountain, ornament, statue, building, fence, apparatus, bench, table, official notice, sign, bridge, structure or other property within any park or parkway, or in any way injure, damage or deface any public building, sidewalk or other public property in the Village of Elk Mound.
- (b) **Breaking of Street Lamps or Windows.** No person shall break glass in any street lamps or windows of any building owned or occupied by the Village of Elk Mound.
- (c) **Damaging Fire Hydrants and Water Mains.** No person shall, without the authority of Village authorities, operate any valve connected with the street or water supply mains, or open any fire hydrant connected with the water distribution system, except for the purpose

of extinguishing a fire. No person shall injure or impair the use of any water main or fire hydrant.

### **Sec. 11-3-6 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 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/her presence may detain such person in a reasonable manner for a reasonable length of time to deliver him/her to a law enforcement officer, or to his/her 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/she shall not be interrogated or searched against his/her will before the arrival of a law enforcement officer who may conduct a lawful interrogation of the accused person. Compliance with this Subsection entitles the merchant or his/her employee affecting the detention to the same defense in any action as is available to a law enforcement officer making an arrest in the line of duty.
- (d) If the value of the merchandise does not exceed One Hundred Dollars (\$100.00), any person violating this Section shall forfeit not more than One Thousand Dollars (\$1,000.00). If the value of the merchandise exceeds One Hundred Dollars (\$100.00), this Section shall not apply and the matter shall be referred to the District Attorney for criminal prosecution.

*State Law Reference:* Sec. 943.50, Wis. Stats.

### **Sec. 11-3-7 Issuance of Worthless Checks.**

- (a) **Violations.** Whoever issues any check or other order for the payment of money less than 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) **Prima Facie Evidence.** 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) **Exceptions.** This Section does not apply to a post-dated check or to a check given in past consideration, except a payroll check.
- (d) **Returned Check Fee.** In the event a person issues a check to the Village, and does not have sufficient funds or credit such that the check is returned unpaid, such person shall pay the check or other order and shall also pay a fee as prescribed in Section 1-3-1, representing the cost of additional administrative expense which results from non-payment of the original obligation. [See also Section 3-1-17].
- (e) **Penalties.**
- (1) In addition to any other penalties provided for under Section 1-1-6, a court may order a violator of this Section to pay restitution to a victim. In determining the method of payment the court shall consider the financial resources and future ability of the violator to pay. The court shall provide for payment of an amount equal to the pecuniary loss caused by the offense. Upon the application of an interested party, the court shall schedule and hold an evidentiary hearing to determine the value of the victim's pecuniary loss resulting from the offense. A victim may not be compensated under this Section and under Sec. 943.245, Wis. Stats.
  - (2) In this Section, "pecuniary loss" means:
    - a. All special damages, but not general damages, substantiated by evidence in the record, which a person could recover against the violator in a civil action arising out of the facts or events constituting the violator's criminal activities, including, without limitation because of enumeration, the money equivalent of loss resulting from property taken, destroyed, broken or otherwise harmed and out-of-pocket losses, such as medical expenses; and
    - b. Reasonable out-of-pocket expenses incurred by the victim resulting from the filing of charges or cooperating in the investigation and prosecution of the offense.

### **Sec. 11-3-8 Trespass to a Dwelling or Land.**

- (a) **Trespass to Land.** No person shall enter or remain on any land after having been notified by the owner or occupant not to remain on the premises.

- (b) **Trespass to Dwelling.** No person shall intentionally enter the dwelling of another without the consent of some person lawfully upon the premises, under circumstances tending to create or provoke a breach of the peace.

*State Law Reference:* Secs. 943.13 and 943.14, Wis. Stats.

## **Sec. 11-3-9 Regulation of Smoking.**

- (a) **Purpose.** This Section is adopted for the purposes of:
- (1) **Public Health Protection.** Protecting the public health, general welfare and safety of the people of the Village of Elk Mound;
  - (2) **Assistance With Regulation Compliance.** Assisting business owners, managers and operators in complying with State law and municipal ordinance requirements; and
  - (3) **Clarifying/Expansion of State Statute.** Clarifying and expanding upon Wisconsin's Smoking Ban Law enacted by 2009 Act 12 under authority creating Sections 101.123(2)(e) and 101.123(4m), Wis. Stats., as created created by the Act.
- (b) **Findings of Fact.** It is recognized that smoking of tobacco-related products is hazardous to the health of both smokers and nonsmokers who are exposed to smoking.
- (1) **Scientific Studies.** Reliable scientific studies, including studies conducted by the Surgeon General of the United States, having shown that breathing secondhand smoke (i.e. sidestream smoke) is a significant health hazard to nonsmokers, particularly to children, the elderly, individuals with cardiovascular disease and individuals with impaired respiratory functions, including asthmatics and those individuals with obstructive airway disease.
  - (2) **Health Hazards Related to Smoking.** Numerous scientific studies have found that tobacco smoke is a major contributor to indoor pollution. Related health hazards induced by breathing secondhand smoke include bronchoconstriction, lung cancer, bronchospasm, respiratory infection, decreased exercise tolerance, and decreased respiratory function.
  - (3) **Air Pollution.** Smoking-caused air pollution is an offensive annoyance and irritant, and smoking results in significant and serious physical discomfort to nonsmokers.
- (c) **Definitions.** As used in this Section, the definitions of Section 101.123(1), Wis. Stats., are hereby adopted and incorporated herein by reference, except as set forth below. In this Section:
- (1) **Village Buildings.** All Village-owned or operated buildings and those portions of buildings leased or operated by the Village of Elk Mound.
  - (2) **Enclosed Indoor Area.** All space between a floor and a ceiling that is bound by walls, doors, or windows, whether open or closed, covering more than fifty percent (50%) of the combined surface area of the vertical planes constituting the perimeter

of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A 0.011 gauge screen with an eighteen (18) by sixteen (16) mesh count is not a wall for purposes of this Section.

- (d) **Smoking Prohibition.** No person may smoke in any of the following:
- (1) **Statutory Prohibitions; Adoption of Statute.** No person may smoke in any place prohibited by Section 101.123(2), Wis. Stats. Except as expressly modified by this Section, the provisions of Section 101.123, Wis. Stats., are expressly adopted and incorporated herein by reference.
  - (2) **Enclosed Indoor Areas.** No person may smoke in any enclosed indoor area, as defined in Subsection (c)(2) above, in any place prohibited by Section 101.123(3), Wis. Stats.
  - (3) **Village Buildings/Enclosed Equipment.** No person may smoke in any Village building or enclosed equipment owned, leased or rented by the Village of Elk Mound.
  - (4) **School Events at Village Parks and Grounds.** No person may smoke while on any Village park or grounds while such facilities are being used for a school-related event by the Public School District serving residents of the Village of Elk Mound.
- (e) **Outside Areas.** Any person managing or in charge of a tavern, restaurant, retail establishment or private club that is subject to this Section may designate an outside area that is a reasonable distance from the entrance to said establishment where employees, customers and/or other persons associated with the establishment may smoke. The designated outside smoking area shall contain receptacles for trash and cigarette butts and shall be maintained in a neat and orderly manner. All refuse and cigarette butts shall be placed in proper receptacles.
- (f) **Exceptions.** The prohibitions against smoking shall not apply to those places or areas set forth in Section 101.123(3), Wis. Stats.
- (g) **Inspection; Enforcement.**
- (1) **Inspection and Enforcement Authorities.** Law enforcement officers, public health officials and Village building inspectors shall have the authority to enter any premises subject to this Section and the smoking ban under State law to ascertain whether the premises are in compliance with the requirements of this Section, and such officials shall take appropriate enforcement action pursuant to this Section and Section 101.123, Wis. Stats.
  - (2) **Penalties.** The following penalties shall be applicable for violations of this Section:
    - a. Any person who violates Subsections (d) or (e) of this Section shall be subject to those penalties and forfeitures prescribed in Section 1-1-6.
    - b. Any person in charge of premises who violates Section 101.123 (2m), Wis. Stats., shall be subject to those penalties prescribed in Section 1-1-6, except that the forfeiture shall be One Hundred Dollars (\$100.00). Prior to issuing a citation to a person in charge for a violation of this Section, enforcement officials shall first issue a written warning notice; once a person in charge has been issued such a



warning notice, he/she may be issued citations for subsequent violations of this Section.

- c. In addition to applicable forfeitures, any person who violates the provisions of this Section shall pay the costs of prosecution, except for the drug enforcement and crime laboratories surcharge under Section 165.755(1)(a), Wis. Stats. Each day of violation shall constitute a separate offense.
- (h) **Interpretation.** Whenever the provisions of the Wisconsin Statutes and this Section conflict, the provisions of this Section shall apply.

## **Sec. 11-3-10 Theft Prohibited.**

- (a) **Acts.** Whoever does any of the following may be penalized as provided in Section 1-1-6 of this Code of Ordinances:
  - (1) Intentionally takes and carries away, uses, transfers, conceals or retains possession of movable property of another without his/her consent and with intent to deprive the owner permanently of possession of such property.
  - (2) By virtue of his/her office, business or employment, or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of another, intentionally uses, transfers, conceals or retains possession of such money, security, instrument, paper or writing without the owner's consent, contrary to his/her authority, and with intent to convert to his/her own use or to the use of any other person except the owner. A refusal to deliver any money or a negotiable security, instrument, paper or other negotiable writing, which is in his/her possession or custody by virtue of his/her office, business or employment, or as trustee or bailee, upon demand of the person entitled to receive it, or as required by law, is prima facie evidence of an intent to convert to his/her own use within the meaning of this Subsection.
  - (3) Having a legal interest in movable property, intentionally and without consent, take such property out of the possession of the pledgee or such other person having a superior right of possession with intent thereby to deprive the pledgee or other person permanently of the possession of such property.
  - (4) Obtains title to property of another by intentionally deceiving him/her with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes a promise made with intent not to perform it if it is a part of a false and fraudulent scheme.
  - (5) Intentionally fails to return any personal property which is in his/her possession or under his/her control by virtue of a written lease or written rental agreement, within ten (10) days after the lease or rental agreement has expired.

- (b) **Definitions.** The following definitions shall be applicable in this Section:
- (1) **Property.** All forms of tangible property, whether real or personal, without limitation including electricity, gas and documents which represent or embody a choice in action or other intangible rights.
  - (2) **Movable Property.** Property whose physical location can be changed, without limitation, including electricity and gas, documents which represent or embody intangible rights, and things growing on or affixed to or found in land.
  - (3) **Value.** The market value at the time of the theft or the cost to the victim of replacing the property within the reasonable time after the theft, whichever is less, if the property stolen is a document evidencing a choice in action or other intangible right; value means either the market value of the choice in action or other right or the intrinsic value of the document, whichever is greater. If the thief gave consideration for or had a legal interest in the stolen property, the amount of such consideration or value of such interest shall be deducted from the total value of the property.
  - (4) **Property of Another.** Includes property in which the actor is a co-owner and property of a partnership of which the actor is a member unless the actor and the victim are husband and wife.

*Cross-Reference:* Section 11-3-1.

## **Sec. 11-3-11 Fraud on Residential Landlords Prohibited.**

- (a) **Prohibited Acts.** Any person who, with intent to defraud, does any of the following shall be guilty of violating this Section:
- (1) Intentionally absconds without paying rent that has been contractually agreed upon in an oral or written lease with a landlord. Prima facie evidence of intentionally absconding will be established if a tenant fails to pay rent due prior to the vacating of the rental premise by the tenant, and the non-payment of said rent continues for a period of five (5) days after vacation of the premise; or
  - (2) Issues any check, money order or any other form of bank or monetary draft as a payment of rent, where such document lacks sufficient funds, where the account is closed, or where such draft is unredeemable in any other form or fashion. Prima facie evidence of intention to defraud will be established if a tenant fails, within five (5) days of a written demand by the landlord or agent, to pay in full the total amount of the draft presented as rent payment plus any bank charges to the landlord attributable to the unredeemability of the draft.
- (b) **Applicability.** This Section shall apply to rental agreements between residential landlords and tenants only. The words and terms used in this Section shall be defined and construed in conformity with the provisions of Chapter AG 134, Wis. Adm. Code, Chapter 704, Wis.

**11-3-11**

Stats., and Sec. 990.001(1), Wis. Stats. The act of service by a landlord of a legal eviction notice or notice to terminate tenancy shall not, in itself, act as a bar to prosecution under this Section.

- (c) **Procedure.** A law enforcement officer may issue a citation only when the complainant provides the following:
- (1) The name and current address of the tenant, a copy of the subject lease agreement, or sworn testimony of the terms of the subject oral lease.
  - (2) The amount of rent due, the date it was due, the date the tenant actually vacated the premise, and testimony that the rent remained unpaid for not less than five (5) days after vacating and that the tenant did not notify or attempt to notify the complainant of the tenant's new address, or that the tenant knowingly gave the complainant a false address.
  - (3) As to an unredeemable payment, the document used for attempting rent payment, the written demand for payment of the full amount plus bank charges, proof that the tenant received the written demand, and testimony that at least five (5) days have elapsed since the demand was received and no payment has been made.

*State Law Reference:* Chapter 704 and Sec. 990.001(1), Wis. Stats.; Ch. AG 134, Wis. Adm. Code.

## **Sec. 11-3-12 Graffiti.**

- (a) **Definition.** "Graffiti" is any drawing, figure, inscription, symbol, or other marking which is scratched, painted, drawn in pen or marker, or placed by some other permanent or semi-permanent means upon sidewalks, streets, public or private structures or any other place in public view without the express permission or consent of the property owner.
- (b) **Public Nuisance.** Graffiti is hereby declared to be a public nuisance, as defined under Title 11, Chapter 6 of this Code, affecting peace and safety. Graffiti is deemed to be a public nuisance not only because it offends the aesthetic sensibilities of the community but because it may indicate the presence of gang activity or encourage gang activity and rivalry. It shall be the duty of every owner, lessee or occupant to promptly remove or obliterate graffiti on any building, fence, structure, parking lot or walkway over which the owner, occupant or lessee has control.
- (c) **Prohibitions.** No person shall write, spray, scratch or otherwise affix graffiti upon any property whether private or public without the consent of the owner or owners of said property. Any person who shall affix graffiti to any property without the consent of the owner shall be liable for the costs of removing or covering such graffiti in addition to any fines imposed for violating this Section. The parents of any unemancipated minor child who affixed graffiti shall be held liable for the cost of removing or covering said graffiti in accordance with Sec. 895.035, Wis. Stats.

(d) **Removal By Property Owner.**

- (1) Every owner of a structure or property defaced by graffiti shall cover or remove the graffiti within fifteen (15) days in compliance with written notice by certified letter from the Village of Elk Mound to remove or cover such graffiti.
- (2) In the event any owner fails to comply with the above-mentioned notice, the Village may have the graffiti covered or removed, and in such event, all costs, fees and expenses will be assessed to said owners real estate taxes pursuant to Sec. 66.0627, Wis. Stats.

### **Sec. 11-3-13 Cemetery Regulations.**

- (a) **Purpose and Definition.** In order to protect cemetery areas within the Village from injury, damage or desecration, these regulations are enacted. The term "cemetery" as hereinafter used in this Section shall include all cemetery property, grounds, equipment and structures, both privately and publicly owned, which are located within the Village of Elk Mound.
- (b) **Authority to Establish Rules and Regulations.** The cemetery property owner shall have the authority to establish reasonable rules and regulations to regulate and govern the operation of any cemetery in accordance with state law and this Code of Ordinances. The cemetery property owner shall reserve the right to prohibit and regulate the planting or placement of any flowers, plants, vines, shrubs, trees, flower pots, urns or other objects on cemetery property. Placements of any such plantings, containers or objects shall be in accordance with established regulations of the cemetery property owner.
- (c) **Specific Regulations.**
  - (1) **Disturbing Cemetery Property.** No person shall cut, remove, damage or carry away any flowers, plants, vines, shrubs or trees from any cemetery lot or property except the owner of the cemetery lot or a person with the cemetery lot owner's consent or any cemetery employee or representative engaged in official cemetery duties for the cemetery owner; nor shall any person without proper authority remove, deface, mark or damage in any manner any cemetery markers, headstones, monuments, fences or structures; nor shall any person without proper authority remove, damage or destroy any vases, flower pots, urns or other objects which have been placed on any cemetery lot; nor shall any person move or remove any cemetery equipment without the owner's consent.
  - (2) **Protection of Cemetery Property.** No person shall trap in any cemetery without specific written authorization of the owner; nor shall any person kill, injure or disturb or attempt to injure or disturb, any animals, birds or waterfowl, wild or domestic within any cemetery in any matter except as provided by this Code of Ordinances; nor shall any person climb any tree, break, cut down, trample upon, remove or in any manner injure, deface, write upon or in any manner damage any tree, shrub, flower, flower bed, turf, grassy area, soil, building, structure, equipment, official notice, sign

or other property within any cemetery. No picnic, parties, or similar gatherings are permitted.

- (3) **Motor Vehicles.** Motor vehicles are restricted to the roads and drives and parking areas. Except for authorized maintenance vehicles, no person shall operate an unlicensed or licensed motorized vehicle on any cemetery property outside of areas specifically designated as parking areas or areas where the operation of such vehicles is specifically permitted. It shall be unlawful for a person to engage in any off-roadway operation of a motorized vehicle on cemetery property without the owner's consent.
- (4) **Speed Limit.** No person shall operate any motorized vehicle in any cemetery in excess of fifteen (15) miles per hour unless otherwise posted.
- (5) **Parking.** No person, without the owner's consent, shall park any motor vehicle in any cemetery on any grassy or seeded area or upon any location except a designated parking area; nor shall any person park a motor vehicle on cemetery property for any purpose except engaging in official cemetery business. Any unlawfully parked motor vehicle may be towed or removed by the cemetery property owner at the vehicle owner's expense.
- (6) **Littering Prohibited.** No person shall litter, dump or deposit any rubbish, refuse, earth or other material in any cemetery without the owner's consent.
- (7) **Pets.** Pets, including animals of any species, and horses are prohibited in any cemetery outside of a vehicle.
- (8) **Sound Devices.** No person shall operate or play any amplifying system or sound device in any cemetery without the owner's consent.
- (9) **Authorized Notices.** No person shall post, paste, fasten, paint or attach any placard, bill, notice, sign or advertising matter upon any structure, tree or other natural object in any cemetery, except cemetery regulations and other signs authorized by the owner. No person shall remove, deface or damage in any manner any official sign or notice posted in any cemetery.
- (10) **Loitering Prohibited.** No person shall loiter or cause a nuisance or engage in any sport or exercise on any cemetery property without the owner's consent.
- (11) **Alcoholic Beverages Prohibited.** No person shall consume or have in his/her possession any open container containing an alcohol beverage upon any cemetery property within the Village unless the property is specifically named as being part of a licensed premises.
- (12) **Play Vehicles Prohibited.** No person shall operate or make use of a play vehicle upon any cemetery property without the owner's consent. As used in this Section, a play vehicle shall mean any coaster, skateboard, roller skates, sled, toboggan, unicycle or toy vehicle upon which a person may ride.
- (13) **Presence After Hours Prohibited.** No person shall be present upon any cemetery property without the owner's consent during posted hours when the cemetery is not open to the public.

### **Sec. 11-3-14 Damaging or Tampering with Coin Machines.**

- (a) **Prohibited Tampering.** No person shall, without lawful authority, open, remove or damage any coin machine, coin telephone or other vending machine dispensing goods 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 Village of Elk Mound. No person shall deposit a slug in a coin-operated machine.
- (b) **Definition.** In this Section, "coin machine" means any device or receptacle designed to receive money or anything of value. The term includes 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. 11-3-15 Theft of Cable Television Service and Tampering.**

- (a) **Prohibited Conduct.** No person, whether or not a subscriber to the cable television system, may intentionally or knowingly damage or cause to be damaged any wire, cable, conduit, equipment or apparatus of a cable provider or commit any act with intent to cause such damage, or tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus, or appurtenances of a cable provider with the intent to obtain a signal or impulse from the cable system without authorization from the cable provider, or to obtain cable television or other communications services with the intent to cheat or defraud the cable provider of any lawful charge to which it is entitled.
- (b) **Theft of Service.** It is unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cable, wire, or other equipment used for the distribution of television signals, radio signals, pictures, programs, sound or any other information or intelligence transmitted over a cable system.

*State Law Reference:* Sec. 943.46, Wis. Stats.

### **Sec. 11-3-16 Fraudulent Tapping of Electric Wires or Gas or Water Meters or Pipes.**

It shall be unlawful for any person without permission and for the purpose of obtaining electrical current, natural gas or water with intent to defraud any vendor of electricity, natural gas or water or to do any of the following:

**11-3-16**

- (a) Connect or cause to be connect by wire or other device with a wire, cable or conductor of any such vendor.
- (b) Connect or disconnect the meters, pipes or conduits of the vendor or in any other manner tamper or interfere with the meters, pipes or conduits or connect with the meters, pipes or conduits by pipes, conduits or other instruments.

*State Law Reference:* Sec. 941.36, Wis.

## Title 11 ► Chapter 4

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# Offenses Involving Alcoholic Beverages

<b>11-4-1</b>	Outside Consumption
<b>11-4-2</b>	Sale to Underage or Intoxicated Persons Restricted
<b>11-4-3</b>	Underage Persons' Presence in Places of Sale; Penalty
<b>11-4-4</b>	Underage Persons; Prohibitions; Penalties
<b>11-4-5</b>	Defense of Sellers
<b>11-4-6</b>	Persons Who Have Attained the Legal Drinking Age; False or Altered Identification Cards
<b>11-4-7</b>	Possession of Alcohol Beverages on School Grounds
<b>11-4-8</b>	Adult Permitting or Encouraging Underage Violation
<b>11-4-9</b>	Solicitation of Drinks Prohibited
<b>11-4-10</b>	Social Host Responsibility

### Sec. 11-4-1 Outside Consumption.

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

- (1) **Regulations.** Unless otherwise provided in this Section, 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, municipal building, library, cemetery or drives or other public area within the Village of Elk Mound or on private property without the owner's consent, except at licensed premises. It shall be unlawful for any person to consume or have in his/her possession any open container containing alcohol beverage upon any public street, public sidewalk, public way or drive, cemetery, municipal building, library, public alley, public parking lot within the Village of Elk Mound, or on private property without the owner's consent, except for licensed premises.
- (2) **Private Property Held Out For Public Use.** It shall be unlawful for any person to consume any alcohol beverages upon any private property held open for public use within the Village of Elk Mound unless the property is specifically named as being part of a licensed premises.
- (3) **Parks.** It shall be unlawful for any person to drink or have in his/her possession any alcohol beverage in any Village park between the hours of 2:00 a.m. and 6:00 a.m.



(4) ***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.
- c. It shall be unlawful for any patron to remove an original unopened package, container or bottle containing any alcohol beverage from a Class "A" licensed premises between the hours of 9:00 p.m. and 6:00 a.m.

(5) ***Exceptions.***

- a. The provisions of this Section may be waived by the Village for duly authorized civic or community events.
- b. Any organization which has been issued a Temporary Fermented Malt Beverage and/or Temporary Wine License for a designated area and event pursuant to this Code of Ordinances, provided that the provisions of this Chapter and Title 7, Chapter 2, are fully complied with.
- c. The provisions of this Section regarding open consumption of fermented malt beverages or intoxicating liquor shall not apply within two hundred (200) feet of a parade route which the Village of Elk Mound has authorized from one (1) hour prior to the scheduled start of said parade until one (1) hour after the end of said parade; except that the foregoing exemption does not extend to any vehicle or unit of the parade, however propelled, nor to any parade participant for that period of time during which the vehicle, unit of the parade or person is participating within the assembly and disembarkment points of the parade.

(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 unmalted 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.
- (2) As used in this Section, the term "public area" shall be construed to mean any location within the Village of Elk Mound 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 Sale to Underage or Intoxicated Persons Restricted.****(a) Sales of Alcohol Beverages to Underage Persons.**

- (1) No person may procure for, sell, dispense or give away any fermented malt beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.
- (2) No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.
- (3) No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. This Subsection does not apply to alcohol beverages used exclusively as part of a religious service.
- (4) No adult may intentionally encourage or contribute to a violation of Subsection (a)(1) or (b).

**(b) Penalties.** For purposes of determining previous violations, the thirty (30) month period shall be measured from the dates of violations that resulted in an imposition of a forfeiture or a conviction. For the purpose of determining whether or not a previous violation has occurred, if more than one (1) violation occurs at the same time, all those violations shall be counted as one (1) violation. A person who commits a violation of Subsection (a) above may be:

- (1) Required to forfeit not more than Five Hundred Dollars (\$500.00) if the person has not committed a previous violation within thirty (30) months of the violation; or
- (2) Fined not more than Five Hundred Dollars (\$500.00) if the person has committed a previous violation within thirty (30) months of the violation.
- (3) Fined not more than One Thousand Dollars (\$1,000.00) if the person has committed two (2) previous violations within thirty (30) months of the violation.
- (4) Fined not more than Ten Thousand Dollars (\$10,000.00) if the person has committed three (3) or more previous violations within thirty (30) months of the violation.
- (5) In addition to the forfeitures provided in Subsections (b)(1)-(4) above, a court shall suspend any license issued under this Chapter to a person violating this Subsection for:
  - a. Not more than three (3) days, if the court finds that the person committed a violation within twelve (12) months after committing one (1) previous violation;
  - b. Not less than three (3) days nor more than ten (10) days, if the court finds that the person committed a violation within twelve (12) months after committing two (2) other violations; or
  - c. Not less than fifteen (15) days nor more than thirty (30) days, if the court finds that the person committed the violation within twelve (12) months after committing three (3) other violations.

**11-4-2**

- (c) **Exception.** A person who holds a Class "A" license, a Class "B" license or permit, a "Class A" license or a "Class B" license or permit who commits a violation is subject to Subsection (b)(5) but is not subject to Subsection (b)(1)-(4) or Sec. 125.11, Wis. Stats.
- (d) **Sale of Alcohol Beverages to Intoxicated Persons.**
  - (1) **Restrictions.**
    - a. No person may procure for, sell, dispense or give away alcohol beverages to a person who is intoxicated.
    - b. No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with a person who is intoxicated.
- (e) **Penalties.** Any person who violates Subsection (d)(1) above shall be subject to a forfeiture of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00).

*State Law Reference:* Section 125.07, Wis. Stats.

### **Sec. 11-4-3 Underage Persons' Presence in Places of Sale; Penalty.**

- (a) **Restrictions.** An underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age may not enter, knowingly attempt to enter, or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued for any purpose except the transaction of business pertaining to the licensed premises with or for the licensee or his or her employee. The business may not be amusement or the purchase, receiving or consumption of edibles or beverages or similar activities which normally constitute activities of a customer of the premises. This Subsection does not apply to:
  - (1) An underage person who is a resident, employee, lodger or boarder on the premises controlled by the proprietor, licensee or permittee of which the licensed premises consists or is a part.
  - (2) An underage person who enters or is on a "Class A" or Class "A" premises for the purpose of purchasing other than alcohol beverages. An underage person so entering the premises may not remain on the premises after the purchase.
  - (3) Hotels, drug stores, grocery stores, bowling alleys, indoor golf simulator facilities, service stations, vessels, cars operated by any railroad, regularly established athletic fields, outdoor volleyball courts that are contiguous to a licensed premises, stadiums or public facilities as defined in Sec. 125.51(5)(b)1.d, Wis. Stats., which are owned by a county or municipality, or centers for the visual. or performing arts.
  - (4) Premises in the state fair park, concessions authorized on state-owned premises in the state parks and state forests as defined or designated in Chapters 27 and 28, Wis. Stats., and parks owned or operated by agricultural societies.

- (5) Ski chalets, golf courses and golf clubhouses, racetracks licensed under Chapter 562, Wis. Stats., curling clubs, private soccer clubs and private tennis clubs.
  - (6) Premises operated under both a "Class B" or Class "B" license or permit and a restaurant permit where the principal business conducted is that of a restaurant. If the premises are operated under both a "Class B" or Class "B" license or permit and a restaurant permit, the principal business conducted is presumed to be the sale of alcohol beverages, but the presumption may be rebutted by competent evidence.
  - (7) Premises operating under both a "Class C" license and a restaurant permit.
  - (8) An underage person who enters or remains in a room on Class "B" or "Class B" licensed premises separate from any room where alcohol beverages are sold or served, if no alcohol beverages are furnished or consumed by any person in the room where the underage person is present and the presence of underage persons is authorized under this Subsection, except as provided in Subsection (b) below.
  - (9) A person who is at least eighteen (18) years of age and who is working under a contract with the licensee, permittee or corporate agent to provide entertainment for customers on the premises.
  - (10) An underage person who enters or remains on Class "B" or "Class B" licensed premises on a date specified by the licensee or permittee during times when no alcohol beverages are consumed, sold or given away. During those times, the licensee, the agent named in the license if the licensee is a corporation or limited liability company or a person who has an operator's license shall be on the premises unless all alcohol beverages are stored in a locked portion of the premises. The licensee shall notify the Police Department, in advance, of the times underage persons will be allowed on the premises under this Subsection.
  - (11) An underage person who enters or remains in a dance hall attached to Class "B" or "Class B" licensed premises if the dance hall is separate from any room where alcohol beverages are sold, if there is a separate entrance to the dance hall and if no alcohol beverages are furnished or consumed by any person in the dance hall where the underage person is present.
  - (12) An underage person who enters and remains on premises for which a temporary Class "B" license is issued under Sec. 125.26, Wis. Stats., if the licensee is authorized by the official or body of the Village that issued the license to permit underage persons to be on the premises under Sec. 125.26(6), Wis. Stats., and if the licensee permits underage persons to be on the premises.
- (b) **Exception Permitting Presence of Underage Persons on Licensed Premises.**
- (1) Underage persons who are not accompanied by a parent, legal guardian or spouse who has attained the legal drinking age may enter and remain in a room on a Class "B" or "Class B" licensed premise which is separate from any room where alcohol beverages are sold or served if:
    - a. No alcohol beverages are furnished or consumed by any person in the room where the underage person is present; and

- b. The Class "B" or "Class B" licensee obtains a written authorization from the Village Board permitting underage persons to be present on a specified date set forth in the authorization. Prior to the issuance of any authorization, the Village Board shall make a determination that the presence of underage persons on the licensed premises will not endanger their health, welfare or safety or that of other members of the community. Licensees shall obtain a separate authorization for each date on which underage persons will be present on the premises.
  - c. Prior to issuance of any authorization, the Village Board may seek the recommendations of law enforcement authorities.
- (2) The presence of underage persons on a licensed premise authorized by Subsection (b)(1) above, shall be subject to the following restrictions and requirements:
- a. Each application shall be received a minimum of five (5) business days prior to the date requested.
  - b. During the period of time when underage persons are permitted on the premise, persons entering the premise, or that authorized portion of the licensed premise, shall be restricted to those individuals at least eighteen (18) years of age. This restriction shall not apply to parents, guardians, employees of the establishment, law enforcement officers, Village officials or anyone else for a legitimate business purpose authorized by the licensee to enter said premises.
  - c. No person shall be admitted to a licensed premise during the period of authorization if it is determined that that person has been drinking alcohol beverages or been using any other drugs not prescribed and taken in accordance with instructions from a licensed physician.
  - d. People attending events authorized under Subsection (b)(1) above must be provided with restroom facilities separate from those being used by individuals present on other portions of the licensed premise where alcohol beverages are being served, sold or consumed.
  - e. There shall be at least one (1) chaperone of each sex present during authorized time periods. Chaperones shall be at least twenty-one (21) years of age. Service personnel employed by the licensed premises shall not qualify as chaperones.
  - f. A licensee shall not allow any underage person to loiter outside the licensed premise including public sidewalks or parking lots adjacent thereto.
  - g. The exterior of the premises shall be lighted so as to provide for the safety of patrons.
  - h. All requirements of Sec. 7-2-18 shall be fully complied with.
- (3) The Village Board may refuse to authorize underage presence on licensed premises under Subsection (b)(1) if the following has occurred:
- a. The applicant has violated any provision(s) of this Section.
  - b. The applicant has failed to comply with applicable requirements/conditions with a prior application.

- c. The laws of the State of Wisconsin or Village ordinances were violated during a previously authorized date of operation.
  - d. Events have taken place on a prior authorized date or dates which make law enforcement authorities unable to certify that the presence of underage persons on the licensed premise will not endanger the health, safety or welfare of other members of the community.
- (c) **Penalties.** A licensee or permittee who directly or indirectly permits an underage person to enter or be on a licensed premises in violation of Subsection (a) above is subject to a forfeiture of not more than Five Hundred Dollars (\$500.00).

### **Sec. 11-4-4 Underage Persons; Prohibitions; Penalties.**

- (a) **Prohibitions.** Any underage person who does any of the following is guilty of a violation:
- (1) Procures or attempts to procure alcohol beverages from a licensee or permittee.
  - (2) Unless accompanied by a parent, guardian or spouse who has attained the legal drinking age, possesses or consumes alcohol beverages on licensed premises.
  - (3) Enters, knowingly attempts to enter or is on licensed premises in violation of Section 11-4-3(a).
  - (4) Falsely represents his or her age for the purpose of receiving alcohol beverages from a licensee or permittee.
- (b) **Adult to Accompany.** Except as provided in Subsection (c) below, any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age who knowingly possesses or consumes fermented malt beverage is guilty of a violation.
- (c) **Exceptions.** An underage person may possess alcohol beverages in the course of employment during his or her working hours if employed by any of the following:
- (1) A brewer.
  - (2) A fermented malt beverages wholesaler.
  - (3) A permittee other than a Class "B" or "Class B" permittee.
  - (4) A facility for the production of alcohol fuel.
  - (5) A retail licensee or permittee under the conditions specified in Sec. 125.32(2) or 125.68(2), Wis. Stats., or for delivery of unopened containers to the home or vehicle of a customer.
  - (6) A campus, if the underage person is at least eighteen (18) years of age and is under the immediate supervision of a person who has attained the legal drinking age.
- (d) **Penalties for Subsection (a) Violations.** Any person violating Subsection (a) is subject to the following penalties:
- (1) For a first (1st) violation, a forfeiture of not more than Two Hundred Fifty Dollars (\$250.00), suspension of the person's operating privilege as provided under Sec.

- 343.30(6)(b)1, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g) or any combination of these penalties.
- (2) For a violation committed within twelve (12) months of a previous violation, either a forfeiture of not less than Three Hundred Dollars (\$300.00) not more than Five Hundred Dollars (\$500.00), suspension of the person's operating privilege as provided under Sec. 343.30(6)(b)(1), Wis. Stats., participation in a supervised work program or other community service work under Subsection (g) or any combination of these penalties.
  - (3) For a violation committed within twelve (12) months of two (2) previous violations, either a forfeiture of not less than Five Hundred Dollars (\$500.00) nor more than Seven Hundred Fifty Dollars (\$750.00), revocation of the person's operating privilege under Sec. 343.30(6)(b)3, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g) or any combination of these penalties.
  - (4) For a violation committed within twelve (12) months of three (3) or more previous violations, either a forfeiture of not less than Seven Hundred Dollars (\$700.00) nor more than One Thousand Dollars (\$1,000.00), revocation of the person's operating privilege under Sec. 343.30(6)(b)3, Wis. Stats., participation in a supervised work program or other community service work or any combination of these penalties.
- (e) **Penalties for Subsection (b) Violations.** Any person violating Subsection (b) above is subject to the following penalties:
- (1) For a first (1st) violation, a forfeiture of not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Dollars (\$200.00), suspension of the person's operating privilege as provided under Sec. 343.30(6)(b)1, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g), or any combination of these penalties.
  - (2) For a violation committed within twelve (12) months of a previous violation, either a forfeiture of not less than Two Hundred Dollars (\$200.00) nor more than Three Hundred Dollars (\$300.00), suspension of the person's operating privilege as provided under Sec. 343.30(6)(b)2, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g), or any combination of these penalties.
  - (3) For a violation committed within twelve (12) months of two (2) previous violations, either a forfeiture of not less than Three Hundred Dollars (\$300.00) nor more than Five Hundred Dollars (\$500.00), revocation of the person's operating privilege under Sec. 343.30(6)(b)3, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g), or any combination of these penalties.
  - (4) For a violation committed within twelve (12) months of three (3) or more previous violations, either a forfeiture of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), revocation of the person's operating

privilege under Sec. 343.30(6)(b)3, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g), or any combination of these penalties.

- (f) **Multiple Violations From an Incident.** For purposes of Subsections (a) or (b) above, all violations arising out of the same incident or occurrence shall be counted as a single violation.
- (g) **Work Programs.**
- (1) A supervised work program ordered under Subsections (d) or (e) above shall be administered by the county department under Sec. 46.215 or 46.22, Wis. Stats., or by a community agency approved by the court. The court shall set standards for the supervised work program within the budgetary limits established by the county board of supervisors. The supervised work program may provide the person with reasonable compensation reflecting the market value of the work performed or it may consist of uncompensated community service work. Community service work ordered under Subsection (d) or (e), other than community service work performed under a supervised work program, shall be administered by a public agency or nonprofit charitable organization approved by the court. The court may use any available resources, including any community service work program, in ordering the child to perform community service work under Subsection (d) or (e).
  - (2) The supervised work program or other community service work shall be of a constructive nature designed to promote the person's rehabilitation, shall be appropriate to the person's age level and physical ability and shall be combined with counseling from a member of the staff of the county department, community agency, public agency or nonprofit charitable organization or other qualified person. The supervised work program or other community service work may not conflict with the person's regular attendance at school. The amount of work required shall be reasonably related to the seriousness of the person's offense.
- (h) **Disclosure of License Revocation Information.** When a court revokes or suspends a person's operating privilege under Subsections (d) or (e), the Wisconsin Department of Transportation may not disclose information concerning or relating to the revocation or suspension to any person other than a court, district attorney, county corporation counsel, city, village or town attorney, law enforcement agency or the person whose operating privilege is revoked or suspended. A person entitled to receive information under this Subsection may not disclose the information to any other person or agency.
- (i) **Applicability of Statutory Proceedings.** A person who is under eighteen (18) years of age on the date of disposition is subject to Sec. 938.344, Wis. Stats., unless proceedings have been instituted against the person in a court of civil or criminal justice after dismissal of the citation under Sec. 938.344(3), Wis. Stats.
- (j) **Alcohol Abuse Programs.**
- (1) In this Subsection, "defendant" means a person found guilty of violating Subsections (a) or (b) who is eighteen (18), nineteen (19), or twenty (20) years of age.



**11-4-4**

- (2) After ordering a penalty under Subsections (d) or (e), the court, with the agreement of the defendant, may enter an additional order staying the execution of the penalty order and suspending or modifying the penalty imposed. The order under this Subsection shall require the defendant to do any of the following:
  - a. Submit to an alcohol abuse assessment that conforms to the criteria specified under Sec. 938.547(4), Wis. Stats., and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to conduct the alcohol abuse assessment and shall specify the date by which the assessment must be completed.
  - b. Participate in an outpatient alcohol abuse treatment program at an approved treatment facility, if an alcohol abuse assessment conducted under Subsection (j)(2)a recommends treatment.
  - c. Participate in a court-approved alcohol abuse education program.
- (3) If the approved treatment facility, with the written informed consent of the defendant, notifies the agency primarily responsible for providing services to the defendant that the defendant has submitted to an assessment under Subsection (j)(2)a and that the defendant does not need treatment or education, the court shall notify the defendant of whether or not the penalty will be reinstated.
- (4) If the defendant completes the alcohol abuse treatment program or court-approved alcohol abuse education program, the approved treatment facility or court-approved alcohol abuse education program shall, with the written informed consent of the defendant, notify the agency primarily responsible for providing services to the defendant that the defendant has complied with the order and the court shall notify the defendant of whether or not the penalty will be reinstated. If the court had ordered the suspension of the defendant's operating privilege under Subsections (d) or (e), the court may order the secretary of transportation to reinstate the operating privilege of the defendant if he or she completes the alcohol abuse treatment program or court-approved alcohol abuse education program.
- (5) If an approved treatment facility or court-approved alcohol abuse education program, with the written informed consent of the defendant, notifies the agency primarily responsible for providing services to the defendant that the defendant is not participating in the program or that the defendant has not satisfactorily completed a recommended alcohol abuse treatment program or an education program, the court shall hold a hearing to determine whether the penalties under Subsection (d) or (e) should be imposed.

**Sec. 11-4-5 Defense of Sellers.**

- (a) **Defenses.** In determining whether or not a licensee or permittee has violated Sections 11-4-2(a) or 11-4-3(a), all relevant circumstances surrounding the presence of the underage

person or the procuring, selling, dispensing or giving away of alcohol beverages may be considered, including any circumstances listed below. In addition, proof of all of the following facts by a seller of alcohol beverages to an underage person is a defense to any prosecution for a violation of this Section:

- (1) That the purchaser falsely represented that he or she had attained the legal drinking age.
  - (2) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the legal drinking age.
  - (3) That the sale was made in good faith and in reliance on the written representation and appearance of the purchaser in the belief that the purchaser had attained the legal drinking age.
  - (4) That the underage person supported the representation under Subsection (a)(1) above with documentation that he/she had attained the legal drinking age.
- (b) **Book Kept by Licensees and Permittees.**
- (1) Every retail alcohol beverage licensee or permittee may keep a record for the purposes of Subsection (a) above. The licensee or permittee or his or her employee may require any of the following persons to sign the book:
    - a. A person who has shown documentary proof that he or she has attained the legal drinking age if the person's age is in question.
    - b. A person who alleges that he or she is the underage person's parent, guardian or spouse and that he or she has attained the legal drinking age, if the licensee or permittee or his or her employee suspects that he or she is not the underage person's parent, guardian or spouse or that he or she has not attained the legal drinking age.
  - (2) The book may show the date of the purchase of the alcohol beverage, the identification used in making the purchase or the identification used to establish that a person is an underage person's parent, guardian or spouse and has attained the legal drinking age, the address of the purchase and the purchaser's signature.

*State Law Reference:* Section 125.07(6) and (7), Wis. Stats.

## **Sec. 11-4-6 Persons Who Have Attained the Legal Drinking Age; False or Altered Identification Cards.**

(a) **Adult Violations.**

- (1) Any person who has attained the legal drinking age, other than one authorized by Sec. 125.08 or Sec. 343.50, Wis. Stats., who makes, alters or duplicates an official identification card may be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00).

**11-4-6**

- (2) Any person who has attained the legal drinking age who, in applying for an identification card, presents false information to the issuing officer may be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00).
- (b) **Underage Violations.** Any underage person who does any of the following is subject to the penalties specified under Section 11-4-4(d) or (e):
  - (1) Intentionally carries an official identification card not legally issued to him or her, an official identification card obtained under false pretenses or an official identification card which has been altered or duplicated to convey false information. A law enforcement officer shall confiscate any card that violates this Subsection.
  - (2) Makes, alters or duplicates an official identification card.
  - (3) Presents false information to an issuing officer in applying for an official identification card.

*State Law Reference:* Sec. 125.09(3), Wis. Stats.

## **Sec. 11-4-7 Possession of Alcohol Beverages on School Grounds Prohibited.**

- (a) **Definitions.** In this Subsection:
  - (1) **Motor vehicle** means a motor vehicle owned, rented or consigned to a school.
  - (2) **School** program for one (1) or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.
  - (3) **School administrator** means the person designated by the governing body of a school as ultimately responsible for the ordinary operations of a school.
  - (4) **School premises** means premises owned, rented or under the control of a school.
- (b) **Prohibitions.** Except as provided by Subsection (c) no person may possess or consume alcohol beverages:
  - (1) On school premises;
  - (2) In a motor vehicle, if a pupil attending the school is in the motor vehicle; or
  - (3) While participating in a school-sponsored activity.
- (c) **Exception.** Alcohol beverages may be possessed or consumed on school premises, in motor vehicles or by participants in school-sponsored activities if specifically permitted in writing by the school administrator consistent with applicable laws and ordinances.
- (d) **Penalty.** A person who violates this Section is subject to a forfeiture of not more than Two Hundred Dollars (\$200.00), except that Sec. 938.344, Wis. Stats., and Section 11-4-4(d) and (e) of this Code of Ordinances provide the penalties applicable to underage persons.

*Cross Reference:* Section 11-6-5.

### **Sec. 11-4-8 Adult Permitting or Encouraging Underage Violation.**

- (a) **Adult Permitting Violation.** No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the person or under the person's control. This Subsection does not apply to alcohol beverages used exclusively as part of a religious service.
- (b) **Adult Contributing to Violation.** No adult may intentionally encourage or contribute to a violation of Section 11-4-4(a) or (b).
- (c) **Penalty.** A person who violates this Section is subject to a forfeiture of not more than Two Hundred Dollars (\$200.00).

*State Law Reference:* Sec. 125.07(1)(a)3 and 4, Wis. Stats.

### **Sec. 11-4-9 Solicitation of Drinks Prohibited.**

Any licensee, permittee or bartender of a retail alcohol beverage establishment covered by a license or permit issued by the Village of Elk Mound who permits an entertainer or an employee to solicit a drink of any alcohol beverage defined in Sec. 125.02(1), Wis. Stats., 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.

### **Sec. 11-4-10 Social Host Responsibility.**

- (a) **Purpose.** The Village of Elk Mound intends to discourage underage possession and consumption of alcohol, even if done within the confines of a private residence or other structure, and intends to hold adult persons civilly responsible who host events or gatherings where persons under twenty-one (21) years of age possess or consume alcohol regardless of whether the person hosting the event or gathering supplied the alcohol. The Elk Mound Village Board finds:
  - (1) **Public Health Considerations.**
    - a. Events and gatherings held on private or public property where alcohol is consumed by persons under the age of twenty-one (21) years of age are harmful to those persons and constitute a potential threat to public health requiring prevention or abatement.
    - b. Alcohol is an addictive drug which, if used irresponsibly, could have drastic effects on those individuals who use it, particularly underage individuals, as well as those who are affected by the actions of an irresponsible user.
  - (2) **Prohibiting Underage Consumption.** Prohibiting underage consumption acts to protect underage persons, as well as the general public, from injuries related to alcohol consumption, such as alcohol overdoses or alcohol-related traffic accidents.

**11-4-10**

- (3) **Parental/Guardian Role.** Events or gatherings involving underage possession and consumption often occur outside the presence of parents. There are, however, instances when the parent(s) or legal guardian is/are present and condone the activity, and, in some circumstances, provide the alcohol.
  - (4) **Deterrent Effect.** A deterrent effect will be created by holding an adult person(s) responsible for hosting an event or gathering where underage possession or consumption occurs.
- (b) **Definitions.** For purposes of this Section, the following terms shall have the following meanings:
- (1) **Alcohol.** Ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, whiskey, rum, brandy, gin or any other distilled spirits including dilutions and mixtures thereof from whatever source or by whatever process produced, including wine and fermented malt beverages.
  - (2) **Alcohol Beverage.** Alcohol, spirits, liquor, wine, beer and other fermented malt beverages, and every liquid or solid containing alcohol, spirits, wine or fermented malt beverages, and which contain one-half of one percent (.5%) or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.
  - (3) **Event or Gathering.** Any group of three (3) or more persons who have assembled or gathered together for a social occasion or other activity.
  - (4) **Host or Allow.** To aid, conduct, entertain, organize, supervise, control, provide or permit a gathering or event.
  - (5) **Parent.** Any adult person having legal custody of a juvenile:
    - a. As natural, adoptive parent or step-parent;
    - b. As a legal guardian; or
    - c. As a person to whom legal custody has been given by order of a court.
  - (6) **Residence, Premises, or Public or Private Property.** Any home, yard, farm, field, land, apartment, condominium, hotel or motel room, or other dwelling unit or accessory structure, or a hall or meeting room, park or any other place of assembly, whether occupied on a temporary or permanent basis, whether occupied as a dwelling unit, or specifically for a party or other social function, and whether owned, leased, rented or used with or without permission or compensation.
  - (7) **Underage Person.** Any individual under twenty-one (21) years of age.
  - (8) **Present.** Being at hand or in attendance.
  - (9) **In Control.** The power to direct, manage, oversee and/or restrict the affairs, business or assets of a person or entity.
- (c) **Prohibited Acts.**
- (1) **Prohibited Hosting Activity.**
    - a. No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on property, including

- any premises, owned and occupied by the adult or occupied by the adult and under the adult's control. This prohibition applies to a lodging establishment, as defined in Sec. 106.52(1)(d), Wis. Stats., only if the adult has furnished payment or security of lodging.
- b. Under this prohibition, it is unlawful for any adult(s) to: host, allow or permit any event or gathering at any residence, premises or on any other private or public property under the adult's control where alcohol or alcohol beverages are present when the adult knows that underage persons will, likely will, or does consume any alcohol or alcohol beverage with the intent to consume it; and the adult(s) fails to take reasonable steps to prevent possession or consumption by the underage person(s).
- (2) **Intent to Aid Prohibited Hosting Activity.** An adult(s) violates this Section if the adult(s) intentionally aids, advises, hires, or conspires with or otherwise procures another to commit or engage in an act prohibited by this Section.
- (3) **Presence Not Required for Violation.** An adult(s) who knowingly hosts an event or gathering does not have to be present at the event or gathering to be responsible.
- (d) **Exceptions.** The following are exceptions to this Section:
- (1) **Other Parties Not Present.** This Section does not apply to conduct solely between an underage person and his/her parent(s) or legal guardian while that parent or legal guardian is present and in control of the underage person.
- (2) **Legally Protected Religious Observances.** This Section does not apply to legally protected religious observances.
- (3) **Employment Exception.** This Section does not apply to situations where underage persons are lawfully in possession of alcohol or alcohol beverages during the course and scope of employment.

**State Law Reference:** Section 125.07(1)(a)3, Wis. Stats.



## Title 11 ► Chapter 5

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# Offenses by Juveniles

<b>11-5-1</b>	Curfew
<b>11-5-2</b>	Possession of Controlled Substances by Juveniles
<b>11-5-3</b>	Petty Theft by Juveniles
<b>11-5-4</b>	Receiving Stolen Goods
<b>11-5-5</b>	Village Jurisdiction Over Juveniles
<b>11-5-6</b>	Possession, Manufacture and Delivery of Drug Paraphernalia
<b>11-5-7</b>	Truancy
<b>11-5-8</b>	Unlawful Sheltering of Minors
<b>11-5-9</b>	Purchase or Possession of Tobacco, Nicotine Products or Vaping Paraphernalia by Minors
<b>11-5-10</b>	Criminal Gang Activity Prohibited
<b>11-5-11</b>	Parental Responsibility for Juvenile Misconduct
<b>11-5-12</b>	Use of Laser Pointing Devices; Possession by Juveniles
<b>11-5-13</b>	Sexting by Minors Prohibited
<b>11-5-14</b>	Enforcement and Penalties

### Sec. 11-5-1 Curfew.

#### (a) Curfew Established.

- (1) **Curfew for Minors Generally.** No minors or persons between the age of sixteen (16) years of age and eighteen (18) years of age shall loiter, idle, wander or play either on foot or in a vehicle of any nature whatsoever upon the streets, alleys, highways, roads, sidewalks, parks, playgrounds, vacant lots or other unsupervised places of the Village of Elk Mound between the hours of 11:00 p.m. and 6:00, unless such minor is accompanied by his or her parent, legal guardian, or person having lawful custody and control of his or her person, or unless there exists a reasonable necessity therefor. The fact that said minor, unaccompanied by a parent, legal 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 minor is there unlawfully and that no reasonable excuse exists therefor.
- (2) **Curfew for Minors Under Sixteen.** No minors or persons under the age of sixteen (16) years of age shall loiter, idle, wander or play either on foot or in a vehicle of any



**11-5-1**

nature whatsoever upon the streets, alleys, highways, roads, sidewalks, parks, playgrounds, vacant lots or other unsupervised places of the Village of Elk Mound between the hours of 10:00 p.m. and 6:00 a.m., unless the such minor is accompanied by his or her parent, legal guardian, or person having lawful custody and control of his/her person, or unless there exists a reasonable necessity therefor. The fact that said minor, unaccompanied by a parent, legal 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 minor is there unlawfully and that no reasonable excuse exists therefor.

(b) **Exceptions.**

(1) **Exceptions Defined.** This Section shall not apply to a juvenile:

- a. Who is performing an errand as directed by his/her parent, legal guardian or person having lawful custody.
- b. Who is on his/her 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, but not later than sixty (60) minutes after the ending of such function.
- e. Who is at any time, in the event of an emergency which would justify the reasonableness of the person's presence.
- f. Who is engaged in interstate travel.
- g. Who is accompanied by his/her parent, guardian, or other adult person having legal custody of such minor;
- h. Who is participating in, going to, or returning from an activity involving the exercise of his/her rights protected under the First Amendment to the United States Constitution or any equivalent rights under the Wisconsin Constitution, including freedom of speech, the free exercise of religion, and the right of assembly.

(2) **Limitations on Exceptions.** These exceptions shall not, however, permit a juvenile to unnecessarily loiter about the streets, alleys or public places or be in a parked motor vehicle on the public streets.

(c) **Responsibility of Operators of Places of Amusement.** No person operating a place of amusement or entertainment within the Village, or any agent, servant or employee of any such person, shall permit a person under seventeen (17) years of age to enter to enter or loiter in such place of amusement or entertainment between 11:00 p.m. and 5:00 a.m. the next day, unless such person under seventeen (17) years of age is accompanied by his/her parent, guardian or other adult person having legal custody of such person.

(d) **Responsibility of Hotels Motels and Rooming Houses.** No person operating a hotel, motel, lodging or rooming house within the Village or any agent, servant or employee of such person, shall permit any person under seventeen (17) years of age to visit, wander or stroll in any portion of such hotel, motel, lodging or rooming house between 11:00 p.m. and

5:00 a.m. the next day, unless such person under seventeen (17) years of age is accompanied by his/her parent, legal guardian or other adult person having legal custody of such person.

- (e) **Parental Responsibility.** It shall be unlawful for any parent, legal guardian or other person having the lawful care, custody and control of any person under age seventeen (17) to permit, or by ineffective control allow, such person to violate the provisions of Subsections (a)-(d) above. The fact that prior to the present offense a parent, legal 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, legal guardian or custodian allowed or permitted the present violation. Any parent, legal guardian or custodian herein who shall have made a missing person notification to the Police Department shall not be considered to have allowed or permitted any juvenile under age sixteen (16) to violate this Section. No person shall be liable under this Subsection for a violation committed by a minor during any period when physical placement of such minor has been assigned exclusively to some other person by judgment or order of a court.
- (f) **Detaining a Juvenile.** Pursuant to Chapter 938, Wis. Stats., law enforcement officers are hereby authorized to detain any juvenile violating the above provisions and other provisions in this Chapter until such time as the parent, legal guardian or person having legal custody of the juvenile shall be immediately notified and the person so notified shall as soon as reasonably possible thereafter report to law enforcement authorities for the purpose of taking the custody of the juvenile and shall sign a release for him or her, or such juvenile may be taken directly from the scene of his/her apprehension to his/her home. If such juvenile's parents or relative living nearby cannot be contacted to take custody of such juvenile and it is determined by the apprehending officer that the juvenile's physical or mental condition is such as would require immediate attention, the law enforcement officer may make such necessary arrangements as may be necessary under the circumstances for the juvenile's welfare.
- (g) **Warning and Penalty.**
- (1) **Explanation Opportunity Prior to Warning/Citation Issuance.** Unless flight by the child or other circumstances makes it impracticable, a law enforcement officer shall, prior to issuing a citation or warning for an offense under this Section, afford the child an opportunity to explain his/her reasons for being present in the public place. A law enforcement officer shall not issue a citation or warning for an offense under this Section unless the officer reasonably believes that an offense has occurred, and that none of the exceptions provided in this Section apply.
  - (2) **Warning.** The first time a parent, legal guardian, or person having legal custody of a juvenile who is taken into custody by a law enforcement officer as provided in Subsection (f) above, such parent, legal guardian, or person having such legal custody shall be advised as to the provisions of this Section and further advised that any

violation of this Section occurring thereafter by this juvenile or any other juvenile under his or her care or custody shall result in a penalty being imposed as hereinafter provided.

(3) **Penalty.**

- a. Any parent, legal guardian, or person having legal custody of a juvenile described in Subsection (a) above who has been warned in the manner provided in Subsection (g)(1) herein and who thereafter violates this Section shall be subject to a penalty as provided in Section 1-1-6 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 juvenile, the action shall be dismissed and the juvenile shall be referred to the court assigned to exercise jurisdiction under Chapter 938, Wis. Stats.
- b. Any juvenile 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. Any juvenile violating this Section shall be subject to disposition as provided in Sec. 938.343, Wis. Stats., or any subsequent amendment, modification, revision, renumbering, recodification or addition or deletion of said provision.

### **Sec. 11-5-2 Possession of Controlled Substances by Juveniles.**

It shall be unlawful for any juvenile to possess a controlled substance contrary to the Uniform Controlled Substances Act, Ch. 961, Wis. Stats.

### **Sec. 11-5-3 Petty Theft by Juveniles.**

It shall be unlawful for any juvenile with intent, to steal or take property from the person or presence of the owner without the owner's consent and with the intent to deprive the owner of the use thereof.

### **Sec. 11-5-4 Receiving Stolen Goods.**

It shall be unlawful for a person under the age of seventeen (17) to intentionally receive or conceal property he/she knows to be stolen.

## Sec. 11-5-5 Village Jurisdiction Over Juveniles.

- (a) **Adoption of State Statutes.** Secs. 938.02, and 938.17(2), Wis. Stats., are hereby adopted and by reference made a part of this Section as if fully set forth herein.
- (b) **Definition of Adult and Juvenile.**
  - (1) **Adult** means a person who is eighteen (18) years of age or older, except that for purposes of prosecuting a person who is alleged to have violated any civil law or municipal ordinance, "adult" means a person who has attained seventeen (17) years of age.
  - (2) **Juvenile** means a person who is less than eighteen (18) years of age, except that for purposes of prosecuting a person who is alleged to have violated a civil law or municipal ordinance, "juvenile" does not include a person who has attained seventeen (17) years of age.
- (c) **Provisions of Ordinance Applicable to Juveniles.** Subject to the provisions and limitations of Sec. 938.17(2), Wis. Stats., complaints alleging a violation of any provision of this Code of Ordinances against juveniles may be brought on behalf of the Village of Elk Mound and may be prosecuted utilizing the same procedures in such cases as are applicable to adults charged with the same offense.
- (d) **No Incarceration as Penalty.** The Court shall not impose incarceration as a penalty for any person convicted of an offense prosecuted under this Section.
- (e) **Additional Prohibited Acts.** In addition to any other provision of the Village of Elk Mound Code of Ordinances, no juvenile 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 Ch. 125, Wis. Stats.
- (f) **Penalty for Violations of Subsections (c) and (e).** Any juveniles who shall violate the provisions of Subsections (c) and (e) shall be subject to the same penalties as are provided in Section 1-1-6 of this Code of Ordinances exclusive of the provisions therein relative to commitment in the County Jail.

*Cross Reference:* Section 11-4-7.

## Sec. 11-5-6 Possession, Manufacture and Delivery of Drug Paraphernalia.

- (a) **Definition.** In this Section, "drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, selling, distributing, delivering, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise

introducing into the human body, a controlled substance, as defined in Ch. 961, Wis. Stats., in violation of this Section. It includes but is not limited to:

- (1) Kits used, intended for use, or designed for use, in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- (2) Kits used, intended for use, or designed for use, in manufacturing, selling, distributing, delivering, compounding, converting, producing, processing, or preparing controlled substances.
- (3) Isomerization devices used, intended for use, or designed for use, in increasing the potency of any species of plant which is a controlled substance.
- (4) Testing equipment used, intended for use, or designed for use, in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.
- (5) Scales and balances used, intended for use, or designed for use, in weighing or measuring controlled substances.
- (6) Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances.
- (7) Separation gins and sifters used, intended for use, or designed for use, in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
- (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use, in compounding controlled substances.
- (9) Capsules, balloons, envelopes, or other containers used, intended for use, or designed for use, in packaging small quantities of controlled substances.
- (10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.
- (11) Hypodermic syringes, needles, or other objects used, intended for use, or designed for use, in parenterally injecting controlled substances into the human body.
- (12) Objects used, intended for use, or designed for use, in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil, into the human body, including but not limited to:
  - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.
  - b. Water pipes;
  - c. Carburetion tubes and devices;
  - d. Smoking and carburetion masks;
  - e. Objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
  - f. Miniature cocaine spoons and cocaine vials;
  - g. Chamber pipes;
  - h. Carburetor pipes;

- i. Electric pipes;
  - j. Air-driven pipes;
  - k. Chillums;
  - l. Bongs;
  - m. Ice pipes or chillers.
- (b) **Determination of Drug Paraphernalia.** In determining whether an object is drug paraphernalia, the following shall be considered, without limitation of such other considerations a court may deem relevant:
- (1) Statements by an owner or by anyone in control of the object concerning its use.
  - (2) Prior convictions, if any, of an owner or of anyone in control of the object, under any city, state or federal law relating to any controlled substance.
  - (3) The proximity of the object in time and space to a direct violation of this Section.
  - (4) The proximity of the object to controlled substances.
  - (5) The existence of any residue of controlled substance on the object.
  - (6) Direct or circumstantial evidence of the intent of the owner, or of anyone in control of the object, to deliver it to persons whom the person knows, or should reasonably know, intend to use the object to facilitate a violation of this Section. The innocence of an owner, or of anyone in control of this object, as to a direct violation of this Section, shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.
  - (7) Oral or written instructions provided with the object concerning its use.
  - (8) Descriptive materials accompanying the object which explain or depict its use.
  - (9) National and local advertising concerning its use.
  - (10) The manner in which the object is displayed for sale.
  - (11) Direct or circumstantial evidence of the ratio of sales of the object to the total sale of the business enterprise.
  - (12) The existence and scope of legitimate uses for the object in the community;
  - (13) Expert testimony concerning its use.
- (c) **Prohibited Uses.**
- (1) **Possession of Drug Paraphernalia.** No person may use, or possess with the primary intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this Subsection.
  - (2) **Manufacture or Delivery of Drug Paraphernalia.** No person may deliver, or possess with intent to deliver, drug paraphernalia, knowing that it will be primarily used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this Subsection.
  - (3) **Delivery of Drug Paraphernalia by a Minor to Minor.** Any person who is under eighteen (18) years of age, who violates Subsection (c)(2) by delivering drug

paraphernalia to a person under eighteen (18) years of age who is at least three (3) years younger than the violator, is guilty of a special offense.

- (4) **Exemption.** This Section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with Ch. 961, Wis. Stats. This Section does not prohibit the possession, manufacture or use of hypodermics, in accordance with Ch. 961, Wis. Stats.
- (d) **Penalties.** Any person who violates Subsection (c)(1), (2) or (3), shall upon conviction, be subject to Section 1-1-6 and disposition under Sec. 938.344(2e), Wis. Stats.

## Sec. 11-5-7 Truancy and Dropouts.

- (a) **Definitions.** For the purpose of this Section, the following definitions shall be applicable:
- (1) **Acceptable Excuse.** Permission of the parent/guardian/legal custodian of the pupil, within limits of policies on truancy established by the school in which the pupil is enrolled. Except in emergencies or unforeseeable circumstances, such permission is expected to be communicated in writing from the parent/guardian/legal custodian to the school, prior to the absence. In emergencies or unforeseeable circumstances, such communication is expected to be as soon as practicable following the absence.
  - (2) **Dropout.** A child who has ceased to attend school, does not attend a public or private school, technical college or home-based private educational program on a full-time basis, has not graduated from high school and does not have an acceptable excuse under Sec. 118.15(1)(b) to (d) or (3), Wis. Stats.
  - (3) **Habitual Truant.** A pupil who is absent from school without an acceptable excuse under Secs. 118.15 and 118.16(4), Wis. Stats., for part or all of five (5) or more days on which school is held during a school semester.
  - (4) **Truant.** A pupil who is absent from school without an acceptable excuse under Secs. 118.15 and 118.16(4), Wis. Stats, for part or all of any day on which school is held during a school semester.
- (b) **Truancy.** No person under eighteen (18) years of age shall be truant. Upon conviction thereof, the following dispositions are available to the court:
- (1) An order for the person to attend school.
  - (2) A forfeiture of not more than Fifty Dollars (\$50.00) plus costs for a first violation, or a forfeiture of not more than One Hundred Dollars (\$100.00) plus costs for any second subsequent violation committed within twelve (12) months of a previous violation, subject to Sec. 938.37, Wis. Stats., and subject to a maximum cumulative forfeiture of not more than Five Hundred Dollars (\$500.00) for all violations committed during a school semester. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardian of the person, or both.
- (c) **Habitual Truancy.**
- (1) No person under eighteen (18) years of age shall be a habitual truant.

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- (2) If the court determines that a person is a habitual truant, the court may order one or more of the following dispositions:
- a. Suspension of the person's operating privilege for not less than thirty (30) days nor more than one (1) year. The court shall immediately take possession of any suspended license and forward it to the Wisconsin Department of Transportation together with a notice stating the reason for and the duration of the suspension.
  - b. An order for the person to participate in counseling or a supervised work program or other community service work as described in Sec. 938.34(5g), Wis. Stats. The costs of any such counseling, supervised work program or other community service work may be assessed against the person, the parents or guardian of the person, or both.
  - c. An order for the person to remain at home except during hours in which the person is attending religious worship or a school program, including travel time required to get to and from the school program or place of worship. The order may permit a person to leave his/her home if the child is accompanied by a parent or guardian.
  - d. An order for the person to attend an educational program as described in Sec. 938.34(7d), Wis. Stats.
  - e. An order for the Wisconsin Department of Work Force Development to revoke, under Sec. 103.72, Wis. Stats, a permit under Sec. 103.70, Wis. Stats., authorizing the employment of the person.
  - f. An order for the person to be placed in a teen court program as described in Sec. 938.342(1g)(f), Wis. Stats.
  - g. An order for the person to attend school.
  - h. A forfeiture of not more than Five Hundred Dollars (\$500.00) plus costs, subject to Sec. 938.37, Wis. Stats. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardian of the person, or both.
  - i. An order placing the person under formal or informal supervision, as described in Sec. 938.34(2), Wis. Stats., for up to one (1) year.
  - j. An order for the person's parent, guardian or legal custodian to participate in counseling at the parent's, guardian's or legal custodian's own expense, or to attend school with the person, or both.
  - k. Any other reasonable conditions consistent with this Section, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults.
- (d) **Dropouts.**
- (1) No person who is at least sixteen (16) years of age but is less than eighteen (18) years of age may be a dropout.
  - (2) If the court determines that a person is at least sixteen (16) years of age but is less than eighteen (18) years of age and is a dropout, the court may suspend the person's



operating privilege until the person reaches the age of eighteen (18). The court shall immediately take possession of any suspended license and forward it to the Wisconsin Department of Transportation, together with a notice stating the reason for and the duration of the suspension.

- (e) **Dispositional Orders and Sanctions.** The court is hereby authorized to exercise each and every kind of authority granted to courts under Wisconsin law. Specifically, the court is hereby authorized to exercise the authority granted to it in Sec. 938.355, Wis. Stats., and is hereby authorized to exercise the authority granted it in Sec. 938.355(6m), Wis. Stats.
- (f) **Adopted Terms.** As used in this Section, the terms "truant", "habitual truant", "operating privilege", and "dropout" have the meanings provided in Sec. 118.163, Wis. Stats. Those definitions are hereby adopted and incorporated herein as if fully set forth. Any future amendment of any such definition is hereby adopted and is incorporated herein as if fully set forth as the effective date of such future amendment.
- (g) **Failure to Cause a Child to Attend School Regularly.**
  - (1) Unless the child is excepted or excused under Sec. 118.15, Wis. Stats., or has graduated from high school, any person having under his/her control a child who is between the ages of six (6) and eighteen (18) years shall cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which the child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the child becomes eighteen (18) years of age.
  - (2) This Section does not apply:
    - a. To a person who has under his/her control a child who has been sanctioned under Sec. 49.26(1)(h), Wis. Stats.
    - b. To a person who proves that he/she is unable to comply with the requirements of this Section because of the disobedience of the child, in which case the action shall be dismissed and the juvenile officer or law enforcement authority shall refer the case to the District Attorney's Office.
    - c. Unless evidence has been provided by the school attendance office that the activities under Sec. 118.16(5), Wis. Stats., have been completed or were not required to be completed as provided in Sec. 118.16(5m), Wis. Stats.
- (h) **Contributing to Truancy.**
  - (1) Except as provided in Subsection (h)(2) below, any person eighteen (18) years of age or older, who, by an act or omission, knowingly encourages or contributes to the truancy, as defined in Subsection (h)(4), of a juvenile shall be subject to a forfeiture pursuant to Section 1-1-6.
  - (2) Subsection (1) above does not apply to a person who has under his or her control a juvenile who has been sanctioned under Sec. 49.26(1)(h), Wis. Stats.
  - (3) An act or omission contributes to the truancy of a child, whether or not the juvenile 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 juvenile to be a truant.

- (4) "Truancy" means any absence of part or all of one (1) or more days from school during which the school attendance officer, principal or teacher has not been notified of the legal cause of such absence by the parent or legal guardian of the absent pupil, and also means intermittent attendance carried on for the purpose of defeating the intent of Sec. 118.15, Wis. Stats.
- (i) **Parent or Legal Guardian Liability for Truancy.**
- (1) Unless the juvenile is excepted or excused under Sec. 118.15, Wis. Stats., or has graduated from high school, any person having under control a juvenile who is between the ages of six (6) and eighteen (18) years shall cause the juvenile to attend school regularly during the full period of hours, religious holidays excepted, that the public or private school in which the juvenile should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the juvenile becomes eighteen (18) years of age.
- (2) a. A person found to have violated Subsection (i)(1) above, after evidence is provided by a school official that the activities under Sec. 118.16(5), Wis. Stats., have been completed, shall be subject to a forfeiture pursuant to Section 1-1-6.
- b. Subsection (i)(2)a above does not apply to a person who has under his or her control a juvenile who has been sanctioned under Sec. 49.26(1)(h), Wis. Stats., nor does it apply if the person proves that he or she is unable to comply with Subsection (i)(1) because of the disobedience of the juvenile.

## **Sec. 11-5-8 Unlawful Sheltering of Minors.**

- (a) **Sheltering or Concealment of Minor.** No person shall intentionally shelter or conceal a minor child who:
- (1) Is a "runaway child", meaning a child who has run away from his or her parent, legal guardian or legal or physical custodian; or
- (2) Is a child who may be taken into custody pursuant to Sec. 938.19, Wis. Stats.
- (b) **Applicable Factors.** Subsection (a) applies when the following conditions are present:
- (1) The person knows or should have known that the child is a child described in either Subsection (a)(1) or (a)(2); and
- (2) The child has been reported to a law enforcement agency as a missing person or as a child described in Subsection (a)(1) or (a)(2).
- (c) **Exceptions.** Subsection (a) does not apply to any of the following:
- (1) A person operating a runaway home in compliance with Sec. 938.227, Wis. Stats.; or
- (2) A person who shelters or conceals a child at the request or with the consent of the child's parent, legal guardian or legal or physical custodian except if the sheltering or concealment violates Sec. 946.71 or 946.715, Wis. Stats.; or
- (3) A person who immediately notifies a law enforcement agency, county department of public welfare or social services, or the intake worker of the court exercising

jurisdiction under Ch. 48 or 938, Wis. Stats., that he or she is sheltering or concealing such child and provides the person or agency notified with all information requested.

## **Sec. 11-5-9 Purchase or Possession of Tobacco, Nicotine Products or Vaping Paraphernalia by Minors.**

### **(a) Finding of Facts; Statement of Purpose.**

- (1) The purpose of this Section is to protect the public health, safety, and welfare of persons in the Village of Elk Mound by prohibiting persons under eighteen (18) years of age from possessing and/or using tobacco products or vapor products or devices, and prohibiting the sale of tobacco products and vapor products and devices to persons under eighteen (18) years of age.
- (2) Vaping devices and products provide an alternative smoking experience to tobacco products. The decline in cigarette smoking and the use of other tobacco products has resulted in an increase in the popularity of vaping devices and alternative nicotine delivery systems, particularly among minors.
- (3) Vaping devices and products often mimic conventional tobacco products in shape, color and size, with the user exhaling a smoke-like vapor similar in appearance to smoke exhaled when using tobacco products.
- (4) Persons under age eighteen (18) years of age are prohibited by law from purchasing or possessing cigarettes, cigars, and other tobacco products, and retailers are prohibited from selling them to minors. Tobacco-less vaping devices and products allow a user to simulate smoking; such products currently may be purchased by minors and are marketed, unlike tobacco products, without health warnings, disclosure of nicotine concentrations, content levels of toxic substances, or age restrictions, and often come in flavors that appeal to minors. Consumers have no way of knowing whether vapor devices and products are safe, what potentially harmful chemicals the products contain, and what level of nicotine the products deliver.
- (5) The production of e-cigarettes, vapor products and vaping devices is not currently regulated by federal or state authorities, and the U.S. Food and Drug Administration (FDA) has not completed full testing of these products. Preliminary studies, however, have determined that e-cigarettes, vapor products and vapor devices can contain chemicals and substances known to be harmful, which may expose users and bystanders to potential health risks. The contents of cartridges used in vaping devices and products varies but often contain nicotine, traces of nicotine, formaldehyde, carcinogens, antifreeze, and other toxic substances which may pose a health risk to users and bystanders.
- (6) Vapor devices and products have been found to emit nicotine, ultrafine particles, lead, acetaldehyde, nickel, chromium, volatile organic compounds and other toxins, which when inhaled can be dangerous to the user and public, especially pregnant women and

- children. Volatile organic compounds, such as benzene and formaldehyde, found in vaping liquids, as well as in tobacco products when smoked, are known carcinogens. Inhalation of vaporized nicotine in propylene glycol is not FDA-approved. Exposure to ultrafine particles may exacerbate respiratory illnesses, such as asthma. There have been incidents of electronic vapor devices exploding, causing serious harm to the user.
- (7) The nicotine and/or chemicals contained in the e-liquid used in vapor devices and products are undetectable unless the liquid is tested in a laboratory facility, making it difficult and impractical for law enforcement officers to ascertain the composition of the liquid used in a vaping device or product. Some cartridges used with vapor devices can be refilled with a liquid nicotine solution, creating the potential for exposure to dangerous nicotine concentrations.
  - (8) Increased nicotine addiction among minors is a likely outcome from use of vaping devices and products, and may lead to users transitioning to tobacco products. After years of declining levels of tobacco use by minors, recent data indicates that tobacco use by minors is again increasing.
  - (9) The use of vapor devices and products in smoke-free locations threatens to undermine compliance with state and local smoking regulations and conflicts with the progress which has been made in public understanding that smoking is not permitted in public places, schools and places of employment.
  - (10) It is the intent of this Section to protect the public health, safety and welfare by having consistent and uniform enforcement of smoke-free laws and ordinances by:
    - a. Reducing the potential for minors to associate the use of vaping products and devices with a normal or healthy lifestyle;
    - b. Reducing the potential for re-normalizing smoking of any type in public places and places of employment; and
    - c. Prohibiting the sale or distribution of vapor devices and products to minors.
  - (11) The Village Board of the Village of Elk Mound determines that prohibiting the sale, furnishing, or giving away of vapor devices and products to minors and prohibiting the possession, purchasing and use of such devices and products is in the public interest and will promote the public health, safety, and welfare.
- (b) **Definitions.** The following definitions are applicable in this Section:
- (1) **Cigarette.** Has the meaning given in Sec. 139.30(1), Wis. Stats.
  - (2) **Distributor.** A person specified under Secs. 139.30(3) or 139.75(4), Wis. Stats.
  - (3) **E-Liquid.** A liquid product, whether or not it contains nicotine, that is intended to be vaporized and inhaled using a vapor product or device.
  - (4) **Identification Card.** A license containing a photograph issued under Ch. 343, Wis. Stats., an identification card issued under Sec. 343.50, Wis. Stats., or an identification card issued under Sec. 125.08, Wis. Stats.
  - (5) **Jobber.** Has the meaning given in Sec. 139.30(6), Wis. Stats.
  - (6) **Law Enforcement Officer.** Has the meaning given in Sec. 30.50(4s), Wis. Stats.

- (7) **Manufacturer.** Any person specified under Secs. 139.30(7) or 139.75(5), Wis. Stats.
- (8) **Minor.** An individual who is less than eighteen (18) years of age.
- (9) **Nicotine Product.** Has the meaning given in Sec. 134.66(1)(f), Wis. Stats.
- (10) **Person Who Sells Tobacco Products at Retail.** A person whose ordinary course of business consists, in whole or part, of the retail sale of tobacco products subject to the state sales tax.
- (11) **Person Who Sells Vapor Products or Devices at Retail.** A person whose ordinary course of business consists, in whole or part, of the retail sale of vapor products or devices.
- (12) **Possession of a Tobacco or Vaping Product or Device.** Means either actual physical control of the tobacco or vaping product or device without necessarily owning that product/device, or the right to control the tobacco or vaping product/device even though the item is in a different place or room than where the person is physically located.
- (13) **Retailer.** Any person licensed under Sec. 139.65(1), Wis. Stats., in regard to tobacco products, or, in the case of vaping, any person offering for sale vaping-related products or devices.
- (14) **School.** Has the meaning given in Sec. 118.257(1)(c), Wis. Stats.
- (15) **Subjobber.** Has the meaning given in Sec. 139.75(11), Wis. Stats.
- (16) **Tobacco Products.** Has the meaning given in Sec. 139.75(12), Wis. Stats., and further means, but is not limited to, any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.
- (17) **Use a Tobacco or Vapor Product.** To smoke, chew, suck, inhale, or otherwise consume a tobacco product or vapor product.
- (18) **Vapor or Vaping Product or Device.** Any product or device containing or delivering nicotine, lobella, or any other substance intended for human consumption that can be used by a person to simulate smoking through the delivery of nicotine or any other substance through inhalation of vapor from the product. Included are any devices, regardless of shape or size, which employs a mechanical heating element, battery, or electronic circuit and that can be used to heat or dispense a liquid solution as a vapor which is intended for human consumption through inhalation. The term includes, but is not limited to, any device marketed as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, vapes, tank systems, electronic nicotine delivery systems, electronic smoking device, or under any similar product name or description. Such devices may be similar in appearance to tobacco cigarettes, cigars or pipes, while others may resemble pens, USB sticks or flash drives, and other everyday items. Also includes any component part of such product or associated paraphernalia whether or not sold separately, such as, but not limited to, any vapor cartridge, solution, or other container, that may or may not contain nicotine, that is intended to be used with a

- vaping device. Not included is any product that has been approved by the FDA for sale as a tobacco cessation product or is being marketed and sold solely for such approved purposes.
- (19) **Vaping.** The use of an electronic or other device that creates an aerosol or vapor from a vapor product, in any manner or in any form or the use of any oral vapor or smoking device
- (20) **Vending Machine.** Has the meaning given in Sec. 139.30(14), Wis. Stats.
- (21) **Vending Machine Operator.** Has the meaning given in Sec. 139.30(15), Wis. Stats.
- (c) **Prohibition Against Sale of or Availability of Cigarettes, Tobacco Products, and Nicotine Products to Minors.** It shall be a violation of this Section for any retailer to sell or give away any cigarettes, tobacco products, or nicotine products to any person under the age of eighteen (18) except as provided in Sec. 254.92(2), Wis. Stats. A vending machine operator is not liable for the purchase of cigarettes, tobacco products, or nicotine products from his/her vending machine by a person under eighteen (18) years of age if the vending machine operator was unaware of the purchase.
- (d) **Prohibited Conduct.**
- (1) Consistent with Sec. 254.92, Wis. Stats., a minor shall not do any of the following:
- Purchase or attempt to purchase a tobacco product, nicotine product, or vaping device or product.
  - Possess or attempt to possess a tobacco product, nicotine product, or vaping device or product.
  - Use a tobacco product, nicotine product or vaping device or product in a public place.
  - Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his/her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product, nicotine product, or vaping device or product.
- (2) No individual, regardless of age, who is enrolled in a public school may use, possess or attempt to possess a tobacco product, nicotine product, or vaping device or product on school grounds and property.
- (e) **Exceptions.** Subsection (d) above does not apply to a minor participating in any of the following:
- An undercover operation in which the minor purchases or receives a tobacco product, nicotine product or vapor product under the direction of a law enforcement agency as part of an enforcement action, unless the initial or contemporaneous purchase or receipt of the tobacco product, nicotine product or vapor product or device by the minor was not under the direction of a law enforcement agency and was not part of the undercover operation.
  - An undercover operation in which the minor purchases or receives a tobacco product, nicotine product, or vapor product or device under the direction of the minor's

employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored enforcement action.

- (3) Compliance checks in which the minor attempts to purchase tobacco products for the purpose of satisfying federal substance abuse block grant youth tobacco access requirements, if the compliance checks are conducted with the prior approval of a law enforcement agency.
  - (4) A minor may possess or handle a tobacco product, nicotine product, or vapor device or product for the sole purpose of resale in the course of employment during his/her normal working hours if employed by a retailer licensed under Sec. 134.65(1), Wis. Stats.
- (f) **Defense of Retailers.**
- (1) Proof of all the following facts by a retailer who sells tobacco products, nicotine products, or vapor devices or products to a minor is a defense to any prosecution for a violation of Subsection (d) above:
    - a. That the purchaser falsely represented that he/she had attained the age of eighteen (18) and presented a fraudulent identification card.
    - b. That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and in the belief that the purchaser had attained the age of eighteen (18).
  - (2) A retailer or vending machine operator shall post a sign(s) in areas within his/her retail premises where tobacco products, nicotine products, or vapor products or devices are sold to consumers stating that the sale of any tobacco product, nicotine product, or vapor product or device to a person under the age of eighteen (18) is unlawful under this Section or comparable state laws.
- (g) **Furnishing to Minors.** Consistent with the requirements of Sec. 134.66, Wis. Stats.:
- (1) No person shall sell, furnish or give any tobacco product, nicotine product, or vapor product or device to a minor, including, but not limited to, through a vending machine.
  - (2) Before selling, offering for sale, giving, or furnishing a tobacco product, nicotine product, or vapor product or device to an individual, such person shall verify that the individual is at least eighteen (18) years of age by doing one of the following:
    - a. Examining a government-issued photographic identification that establishes that the individual is at least eighteen (18) years of age.
    - b. For sales made through the internet or other remote sales method, performing an age verification through an independent, third-party age verification service that compares information available from a commercially available database, or aggregate of databases, that are regularly used by government agencies and businesses for the purpose of age and identity verification of the personal information entered by the individual during the ordering process that establishes that the individual is eighteen (18) years of age or older.

- (3) No manufacturer, distributor, jobber, sub-jobber, or retailer, or their employees or agents, may provide cigarettes, tobacco products, nicotine products, or vapor devices or products for nominal or no consideration to any person under the age of eighteen (18).
- (h) **Seizure of Products.** A law enforcement officer may seize any tobacco product, nicotine product, or vapor device or product involved in any violation of this Section committed in his/her presence.
- (i) **Penalties.** Any person who violates provisions of this Section shall be subject to the penalties set forth in Section 1-1-6 of this Code of Ordinances, except that where a minor is adjudged to have violated this Section, the court is also authorized to impose any of the dispositions in Secs. 938.343 and 938.344, Wis. Stats.

### **Sec. 11-5-10 Criminal Gang Activity Prohibited.**

- (a) **Authority.** This Section is adopted pursuant to the authority granted by Sec. 66.0501 and Chapter 948, Wis. Stats.
- (b) **Definitions.** For purposes of this Section, the following terms are defined:
- (1) **"Criminal Gang"** means an ongoing organization, association or group of three (3) or more persons, whether formal or informal, that has as one of its primary activities, the commission of one (1) or more criminal or unlawful acts, or acts that would be criminal or unlawful if the actor were an adult, specified in Sec. 939.22(21)(a) to (s), Wis. Stats., or in any of the Code of Ordinances sections referred to in Subsection (b)(2) below; that has a common name or common identifying sign or symbol and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.
  - (2) **"Pattern of Criminal Gang Activity"** has the same meaning as the definition in Sec. 939.22(21), Wis. Stats., the list of offenses in Subsections (a) to (s) of that Section to Title 11 of this Code of Ordinances.
  - (3) **"Unlawful Act"** includes a violation of any of the Code of Ordinances sections referred to in Subsection (b)(2) above or any criminal act or act that would be criminal if the actor were an adult.
- (c) **Unlawful Activity.**
- (1) It is unlawful for any person to engage in criminal gang activity.
  - (2) It is unlawful for any person to solicit or attempt to solicit a person who has not attained the age of eighteen (18) years, to commit or attempt to commit any violation of the provisions of this Section, or any one (1) or more of those sections of the Code of Ordinances referred to in Subsection (b)(2) above.
  - (3) It is unlawful for any person to solicit or attempt to solicit a person who has not attained the age of eighteen (18) years, to participate in criminal gang activity.



- (4) It is unlawful for any person to solicit or attempt to solicit a person who has not attained the age of eighteen (18) years, to join a criminal gang.

*State Law Reference:* Sec. 941.38, Wis. Stats.

### **Sec. 11-5-11 Parental Responsibility for Juvenile Misconduct.**

- (a) **Purpose.** This Section is intended to reduce the incidents of misconduct by juveniles or underage persons by requiring proper supervision on the part of custodial parents.
- (b) **Prohibited Conduct.** Every custodial parent has the duty to properly supervise his/her child. It shall be unlawful for any custodial parent to fail to properly supervise his/her child. Proof of a child's conviction of a Village of Elk Mound ordinance violation, a violation of a state statute that occurred in the Village of Elk Mound, or any combination thereof twice within a six (6) month period or three (3) or more times within a twelve (12) month period shall be prima facie evidence that the custodial parent is guilty of failing to properly supervise the child. A child's traffic offenses shall not be considered under this Section except for alcohol and drug related offenses, reckless driving, and traffic crimes. The six (6) and twelve (12) month periods shall be measured from the date of the first violation.
- (c) **Definitions.** For purposes of this Section:
- (1) **Child.** A person under the age of eighteen (18) years.
  - (2) **Custodial Parent.** A parent of a minor child who has custody of the child, that is, the parent who has responsibility for caring for and supervising the child at the time the child's ordinance violations occurred.
  - (3) **Custody.** Either physical custody of a child under a court order under Secs. 767.23 or 767.24, Wis. Stats., custody of a child under a stipulation under 767.10, Wis. Stats, or actual physical custody of the child. "Custody" does not include legal custody, as defined under Sec. 48.01(12), Wis. Stats., 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 violations occurred.
- (d) **Defenses.**
- (1) The following shall be defenses to a violation of Subsection (b):
    - a. Where the parent can provide specific evidence of on-going participation in, or recent completion of, parenting classes, family therapy, group counseling or AODA counseling which includes the parent or child in question;
    - b. Where the parent reported the act(s) to the appropriate authorities;
    - c. Where the parent has made all reasonable and available efforts under the circumstances to prevent the juvenile misconduct;

- d. Where the parent is not legally responsible for the supervision of the juvenile at the time the misconduct occurred; or
  - e. Where the parent has a physical or mental disability or incompetency rendering him/her incapable of supervising the juvenile at the time the misconduct occurred.
- (2) It is not a defense when the parent assigns his/her parental responsibility to another, except pursuant to legal proceedings which result in a court order effectuating the same. The parent has the burden of proving his/her defense by clear and satisfactory evidence.

## **Sec. 11-5-12 Use of Laser Pointing Devices; Possession by Juveniles.**

- (a) **Definitions.** The following definitions shall be applicable in this Section:
- (1) **Laser.** Any laser pen, laser pointer, laser-style flashlight, or laser units of the following types: A helium neon (HeNe) laser which operates at wavelength of 832.8nm with a mandated power limit of 5mW. Said lasers are considered a Class 2 laser with the potential for eye injury, or a diode laser which typically operates at a wavelength of 670 nm (although other model specifications are possible) with a power source providing 5mW. Said lasers are considered Class 3a lasers, with the potential for eye injury.
  - (2) **Direct Supervision.** Means that the parent or legal guardian must be in such a position as to be able to visually monitor and physically control the behavior of the minor in question.
- (b) **Prohibited Conduct.**
- (1) **Prohibited Laser Use.** It shall be unlawful for any person, to focus, point or shine a laser beam directly or indirectly on another person or animal in such a manner as is intended to harass, intimidate, threaten or annoy said person or animal. Sworn law enforcement officers, while working in their legal capacity, are exempt from the provisions of this Section.
  - (2) **Possession by Juveniles.**
    - a. It shall be unlawful for any person under the age of eighteen (18) years of age to do the following:
      - 1. Purchase or attempt to purchase any laser.
      - 2. Possess, except under the direct supervision of said minor's parent or legal guardian, any laser.
      - 3. Falsely represent his/her age for the purpose of receiving any laser.
    - b. No person shall sell, give or otherwise transfer a laser unit to any person under the age of eighteen (18) who is not under the direct supervision of their parent or guardian at the time of transfer.
    - c. A person shall not be in violation of this Subsection if his/her possession of a laser pointing device is necessary for his/her employment, trade or occupation,

and it is necessary for the pointer to be carried on his/her person while engaged in such work.

## **Sec. 11-5-13 Sexting By Minors Prohibited.**

- (a) **Definitions.** The following terms shall have the meanings indicated:
- (1) **Harmful to Minors.** Any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:
    - a. Predominantly appeals to a prurient, shameful, or morbid interest;
    - b. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
    - c. Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.
  - (2) **Minor.** Any person under the age of eighteen (18) years of age.
  - (3) **Nudity.** The showing of the human male or female genitals, pubic area, or buttocks with less than full opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstances constitute "nudity", irrespective of whether or not the nipple is covered during or incidental to feeding.
- (b) **Prohibited Conduct.** A minor commits the offense of sexting by knowingly:
- (1) Using a computer, cellphone, or any other device capable of electronic data transmission or distribution to transmit or distribute to another minor any photograph or video of any person which depicts nudity and is harmful to minors;
  - (2) Possessing a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity and is harmful to minors. A minor does not violate this Subsection if any of the following apply:
    - a. The minor did not solicit the photograph or video;
    - b. The minor took reasonable steps to report the photograph or video to a school or law enforcement officials; and
    - c. The minor did not transmit or distribute the photograph or video to a third party other than a school or law enforcement official.
  - (3) Using a computer, cellphone, or any other device capable of electronic data transmission or distribution to transmit or distribute to another minor any text, correspondence, or message of a sexual nature when it:
    - a. Predominantly appeals to a prurient, shameful or morbid interest;
    - b. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors;

- c. Taken as a whole, is without serious literary, artistic, political, or scientific value for minors; and/or
- d. Soliciting the transmission or distribution of any correspondence, text, message, photograph or video from another minor that would itself be prohibited by this Section.

### **Sec. 11-5-14 Enforcement and Penalties.**

- (a) **Citation Process.** For violations of Sections 11-5-2 through 11-5-13, juveniles may be cited by the citation process on a form approved by the Chief of Police and shall contain on the reverse side the penalties that the juvenile may receive simultaneously with issuing the citation to the juvenile. A copy will be mailed to the parent or legal guardian.
- (b) **Penalties.** Violations of Sections 11-5-2 through 11-5-13 by a person under the age of eighteen (18) shall be punishable according to Section 1-1-6 of this Code of Ordinances and Sections 938.17(2), 938.343, 938.344 and 938.345, Wis. Stats. Nothing in this Section shall prevent the juvenile officer, in his/her discretion, from referring cases directly to the District Attorney's office.