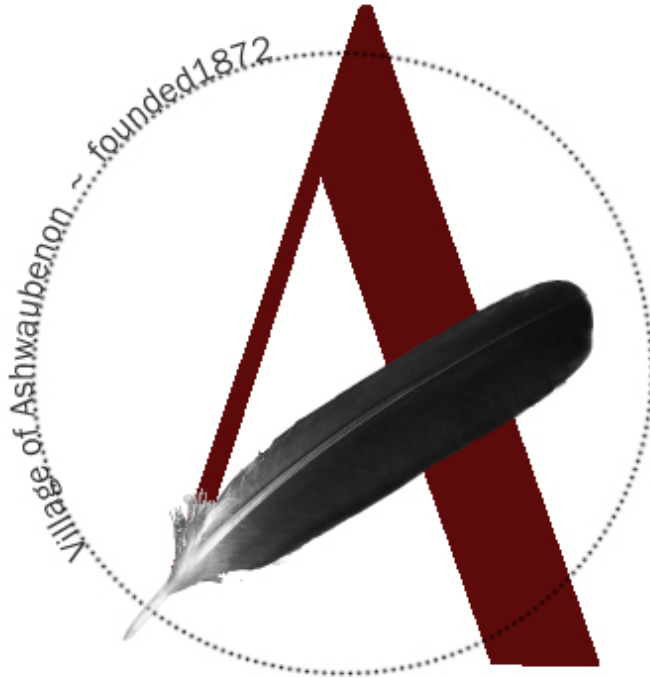


# Village of Ashwaubenon

## Municipal Code Book

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Printed for:  
Chapter 9 - Criminal Code

# Municipal Code Book

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## Chapter 9 - Criminal Code

### Article 1 - Miscellaneous Offenses

#### 9-1-1 Ordinance Violations and Offenses Against State Laws Subject to Forfeiture

The following are sections of this Chapter and Wisconsin Statutes numbers following the prefix "9" defining offenses against the peace and good order of the state which are adopted by reference to define offenses against the peace and good order of the village, provided the penalty for commission of such offenses hereunder shall be limited to a forfeiture imposed under Ordinance 1-1-13.

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(Ord. No. O5-1-17, 5-26-2017) (Code 2006, § 9.01; Ord. No. O11-05-90, 11-27-1990; Ord. No. O2-5-94, 2-22-1994; Ord. No. O9-6-95, 9-26-1995; Ord. No. O10-4-98, 10-27-1998; Ord. No. O12-1-06, § 1, 12-12-2006; Ord. No. O7-1-09, § 1, 7-14-2009; Ord. No. O6-2-2014, § 2, 6-24-2014)

## 9-1-2 Possession of Dangerous Weapons

### (A) *Definitions.*

- (1) *Firearm* means a weapon that acts by force of gunpowder.
  - (2) *Law Enforcement* means any person employed by the State of Wisconsin or any political subdivision of this state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances he or she is employed to enforce.
  - (3) *Weapon* means a handgun, an electronic weapon as defined at Wis. Stat. § 941.295, a knife other than a switchblade under Wis. Stats. § 941.24, or a billy club.
- (B) *Village Municipal Buildings in Which Prohibited.* In addition to the provisions of Wis. Stat. § 175.60 enumerating places where the carrying of a weapon or a firearm is prohibited, including exceptions thereto, it shall be unlawful for any person other than a law enforcement officer to enter the following city municipal buildings while carrying a weapon or a firearm:

- (1) Village Hall.
- (2) Ponderosa Fire Station.
- (3) Klipstine Park Community Center.
- (4) Ashwaubomay Park Pool House.
- (5) All Village well/pump stations.
- (6) Municipal Garage.
- (7) Enclosed Village Park Concession Stands.

- (8) Ashwaubenon Historical Society.
- (C) *Signage.* Signs meeting the requirements of Wis. Stat. § 943.13(2)(bm)1 shall be posted in prominent places near all entrances of such buildings regarding such restrictions.
- (D) *Trespasser.* Any person who enters or remains in any aforementioned municipal building contrary to such signage shall be considered a trespasser subject to penalty as proscribed under section 9-40 of this Code.
- (E) *Discharge of Firearms Within the Village Limits.* No person, except an authorized police officer, shall discharge, or cause to be discharged, any firearm within the village limits as defined in this section.
- (F) *Weapons Other than Firearms.* No person shall carry or have under his control any rifle, pellet gun, BB gun, slingshot or other weapon other than a firearm, as defined above, that projects any type of missile in public while such weapon is loaded or uncased or uncovered.
- (G) *Discharge prohibited.* No person shall discharge, or cause to be discharged, any weapon as defined herein within the village limits as defined in this section.

(Code 2006, § 9.02; Ord. No. O8-01-84, 8-28-1994; Ord. No. O12-02-84, 12-18-1994; Ord. No. O10-2-09, § 1, 10-13-2009; Ord. No. O9-5-11, § 1, 9-27-2011)

### **9-1-3 Throwing or Shooting Missiles and Projectiles**

- (A) *Purpose:* The purpose of this section is to update existing archery hunting requirements to come into compliance with 2013 Wisconsin Act 71.
  - (1) Hunting of any bird, wild fowl or animal with a bow and arrow or crossbow on property owned by the Village is prohibited except by deer management permit.
  - (2) Hunting with a bow and arrow or crossbow may take place on private property within the Village with the following restrictions:
    - (a) No person may hunt on private property with a bow and arrow or crossbow that is within 50 yards of a building located on private property owned by another individual, unless the owner of the land on which the building is located allows hunting with a bow and arrow or crossbow within 50 yards of the building.
    - (b) Any person hunting with a bow and arrow or crossbow must be at an elevation where the discharge the arrow or bolt from the respective weapon is always toward the ground.
    - (c) Any person legally hunting and shooting deer on private property may go onto Village park or conservancy property to pursue and retrieve a wounded or dead deer.
    - (d) Any person harvesting a deer on public or private property shall remove and dispose of in a proper manner all entrails or other organs of the harvested deer.

- (B) No person shall throw or shoot any object, stone, snowball or other missile or projectile, by hand or by any other means, at any person or at, in or into any building, street, sidewalk, alley, highway, park, playground or other public place within the Village.

(Code 2006, § 9.03), (Ord. No. O5-4-15, 05-26-15)

#### **9-1-4 Fireworks**

- (A) *Definition.* In this section, the term "fireworks" means anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include any of the following:
- (1) Fuel or a lubricant.
  - (2) A firearm cartridge or shotgun shell.
  - (3) A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway: aircraft, watercraft or motor vehicle.
  - (4) A match, cigarette lighter, stove, furnace, candle, lantern or space heater.
  - (5) A cap containing not more than one quarter grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
  - (6) A toy snake which contains no mercury.
  - (7) Tobacco and a tobacco product.
  - (8) A sparkler on a wire or wood stick not exceeding 36 inches in length that is designed to produce audible or visible effects.
  - (9) A device designed to spray out paper confetti or streamers and which contains less than one quarter grain of explosive mixture.
  - (10) A device designed to produce an audible sound but not explode, spark, move or emit an external flame after ignition and which does not exceed three grams in total weight.
  - (11) A fuseless device that is designed to produce audible or visible effects, and that contains less than one-quarter grain of explosive mixture.
  - (12) A device that is designed primarily to burn pyrotechnic smoke-producing mixtures, at a controlled rate, and that produces audible or visible effects.



- (13) A cylindrical fountain that consists of one or more tubes and that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.
- (14) A cone fountain that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.
- (B) *Fireworks Prohibited.* No person may possess, use, sell, or possess with intent to sell fireworks except as allowed in this section.
- (C) *Exclusions.* This section shall not apply to:
  - (1) Explosives, ammunition and blasting agents handled and used in accordance with state law.
  - (2) The use or sale of blank cartridges for circus or theatrical purposes, or signal purposes in athletic contests or sporting events, or use by militia, police or military organizations.
  - (3) Fireworks in the possession of or being used by a permittee in accordance with a permit issued under this Section.
- (D) *Pyrotechnic Display Permits.*
  - (1) This section shall not prohibit the use of fireworks for pyrotechnic displays given by public authorities, fair associations, amusement parks, park boards, civic organizations or groups of individuals that have been granted a permit for such display by the director of public safety. No permits shall be issued to minors.
  - (2) Application for permits shall be made in writing at least 15 days in advance of the date of the display, and shall specify: the name and address of the permit holder; the kind and quantity of fireworks which will be displayed; and the date and location of permitted use. In addition, applicants must submit a site plan and pay a fee which is on file in the village clerk's office at the time of application. After such permit has been issued, sale, possession, use and distribution of fireworks for such display shall be lawful for the purpose only. No permit granted hereunder shall be transferable. This fee may be waived for nonprofit organization by the Chief of Public Safety.
  - (3) Every such display shall be handled by a competent adult operator and shall be of such composition, character, and so located, discharged or fired as in the opinion of the Chief of Public Safety, shall not be hazardous to property or endanger any person. The Village Fire Inspector shall be provided with a detailed listing of the fireworks to be used in the pyrotechnic display and may require a demonstration prior to the event.

- (4) Every permittee shall have and maintain adequate liability insurance with minimum limits of \$1,000,000.00 bodily injury and property damage, combined single limit, naming the village, its officers, employees and agents as additional insureds. Said insurance shall indemnify and defend the village, its officers, employees and agents against all claims, liability, loss, damages or expenses, whether caused by or contributed to by the negligence of the village, its officers, employees or agents. Said insurance shall provide that the village receive written notice 30 days prior to any cancellation, nonrenewal or material change in the policy. Proof of said insurance shall be submitted to the Chief of Public Safety.
- (E) *Retail Permits.*
- (1) All retailers, before selling or offering to sell Class C fireworks except those devices listed in subsection (1) of this section, shall obtain a permit from the Chief of Public Safety. No permits shall be issued to minors.
  - (2) The application for such permit shall be made annually in writing at least 30 days in advance of the sale or offer to sell, and shall specify: the name and address of the permit holder, the date on and after which sales or offers to sell shall be made; and the kind, quantity, and location of each device to be offered for sale. In addition, applicants shall pay a fee of \$500.00 at the time of application. No permit granted hereunder shall be transferable.
  - (3) One permit is required for each sales location.
  - (4) Permit must be displayed along with village ordinance.
  - (5) Permittee shall not employ minors to sell or handle fireworks except under the immediate on-site supervision of an adult.
- (F) *Out of State.* This section does not prohibit a resident wholesaler, dealer or jobber from selling fireworks at wholesale, if that wholesaler, dealer or jobber ships or delivers the fireworks outside of the state in sealed opaque containers, as defined in Wis. Stats. § 194.01(1), (2) and (11), by common motor carrier, contract motor carrier or private motor carrier engaged in the business of shipping or delivering property, or to a person or group granted a permit under this section.
- (G) *Rockets.* No person shall manufacture, build, sell, possess or fire any model rocket, except in compliance with the provisions of NFPA 1122, which is hereby adopted and incorporated by reference.
- (H) *Storage and Handling.*
- (1) No wholesaler, dealer or jobber may store or handle fireworks in premises unless the premises are equipped with fire extinguishers approved by the Chief of Public Safety.
  - (2) No person may smoke where fireworks are stored or handled or within 50 feet of said location.

- (3) A person who stores or handles fireworks shall immediately notify the Chief of Public Safety of the location, description and quantity of the fireworks.
- (4) No wholesaler, dealer or jobber may store fireworks within 50 feet of a dwelling.
- (5) No person may store fireworks within 50 feet of a public assemblage or place where gasoline or volatile liquid is dispensed in quantities exceeding one gallon.
- (I) *Parental Liability.* A parent, foster, or family operated group home parent or legal guardian of a minor who consents to the use of fireworks by the minor who is under the age of 18 years of age is liable for damages caused by the minor's use of the fireworks, and, in addition, shall be subject to the penalty provided in subsection (L) of this section.
- (J) *Seizure.* The Chief of Public Safety or his designee may seize, at the expense of the owner, all fireworks stored, handled, sold, possessed or used by any person who violates this section.
- (K) *Adoption and incorporation of NFPA.* NFPA 1123 and NFPA 1126 are hereby adopted and incorporated by reference.
- (L) *Penalty.* Any person who violates any provision of this section shall be subject to a forfeiture of not less than \$50.00 nor more than \$1,000.00. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Code shall preclude the village from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.

(Code 2006, § 9.04; Ord. No. O2-4-04, 2-24-1994; Ord. No. O9-1-05, § 9.04, 9-13-2005) State law reference— Fireworks, Wis. Stats. § 167.10.

#### **9-1-5 Obstructing Streets and Sidewalks Prohibited**

No person shall stand, sit, loaf, loiter or engage in any sport or exercise on any public street, sidewalk, bridge or public ground within the village in such manner as to prevent or obstruct the free passage of pedestrian or vehicular traffic thereon or prevent or hinder free ingress to or egress from any place of business or amusement or any church, public hall or meeting place.

(Code 2006, § 9.05)

#### **9-1-6 Loud and Unnecessary Noise Prohibited; Applicability**

- (A) *Prohibited.* No person shall make or cause to be made any loud, disturbing or unnecessary sounds or noises which may annoy or disturb a person of ordinary sensibilities in or about any public street, alley or park or any private residence.

- (B) *Railroad Regulations Within the Village.* Except in emergencies or if public safety requires, no person, railroad company or locomotive engineer shall blow, sound or cause to be blown or sounded any whistle or horn on any locomotive within the Village of Ashwaubenon's Quiet Zone that has been approved by the Federal Railroad Administration as of September 20, 2005, all within the corporate limits of the village, where railroad and street intersections have been constructed in such a manner that includes safety safeguards including but not limited to two quadrant gates, medians and channelized directional traffic at each crossing, cantilever warning lights, advance warning signs and pavement marking to wit: the Fox Valley & Western Ltd. Wisconsin Central Division of the Canadian National Railroad track line from Ashwaubenon Creek to Lombardi Avenue, i.e., village municipal limits.
- (C) *Applicability.*
- (1) This section shall apply to any sound which would include, but not limited to, squealing of tires, whistling, yelling, music, bells, horns, engine exhaust, engine motor sound, vehicle in need of repair, radios or loud speakers, construction or demolition, animal sounds, sporting events, including landscaping and lawn maintenance equipment within a residential zoning classification.
  - (2) As used in this section, the term "unreasonable" means having or showing little sense of good judgment, not rational, excessive, injuring or endangering safety, any noise that causes damage to a property. "Unnecessary" means unusually loud, annoying, disturbing, unnatural or alternative methods are available producing less noise.
  - (3) Except in an emergency, no noise should be made between the hours of 10:00 p.m. to 7:00 a.m. which could be heard from a distance of 100 feet or outside the originating property line, whichever is least. During all other times no noise that is unreasonable and/or unnecessary, which causes a disturbance and which a complaint is generated.

(Code 2006, § 9.06; Ord. No. O2-1-02, 2-26-2002; Ord. No. O10-3-05, § 9.06, 10-11-2005; Ord. No. O3-4-07, § 1, 3-13-2007)

### **9-1-7 Loitering**

- (A) *Loitering or Prowling Prohibited.* No person shall loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person takes flight upon appearance of a police, public safety officer, or peace officer, refuses to identify himself or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances makes it impracticable, a police, public safety officer, or peace officer shall, prior to any arrest for an offense under this subsection, afford the person an opportunity to dispel any alarm which would otherwise be warranted by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this subsection if the police, public safety officer or peace officer did not comply with the preceding sentence or if it appears at trial that the explanation given by the person was true and if believed by the police or peace officer at the time would have dispelled the alarm.
- (B) *Obstruction of traffic.* No person shall loaf or loiter in a group or crowd upon the public streets, alleys, sidewalks, street crossings or bridges or in any other public place within the village in such manner as to prevent, interfere with or obstruct the ordinary free use of such public streets, alleys, sidewalks, street crossings or bridges or other public places by persons passing along and over the same.

(C) *Requested to Move.*

- (1) *Groups or Crowds.* No person shall loaf or loiter in a group or a crowd upon the public streets or sidewalks or in adjacent doorways or entrances, on street crossings or bridges or in any other public place, or on any private premises without invitation from the owner or occupant, after being requested to move by any police or public safety officer or by any person in authority at such places.
  - (2) *Places of Public Assembly or Use.* No person shall loiter, lounge or loaf in or about any depot, theater, dance hall, restaurant, store, mall, public sidewalk, public parking lot or other place of assembly of public use after being requested to move by any police or public safety officer or by any person in authority at such place. Upon being requested to move, a person shall immediately comply with such request by leaving the premises or the area thereof.
  - (3) *Obstructing Highways.* No person shall obstruct any street, bridge, sidewalk or crossing by lounging or loitering in or upon the same after being requested to move on by any police officer.
- (D) *Loitering in School and Playground Areas.* No person not in official attendance or on official school business shall enter into, congregate, loiter, wander, stroll, stand or play in any school building or in or about any playground area adjacent thereto within the village on official school days.

(Code 2006, § 9.07; Ord. No. O11-3-91, 11-19-1991; Ord. No. O5-04-96, 5-28-1996) State law reference— Loitering in roadway, Wis. Stats. § 346.29.

#### **9-1-10 Littering Prohibited**

- (A) No person shall throw, deposit, place or dump any glass, refuse, waste, filth, tires, wood waste, grass clippings, weeds, shingles, waste from cement trucks or any other litter upon the streets, alleys, highways, public parks or other property of the village or upon any private property or upon the surface of any body of water within the village.
- (B) No person shall place anything in a privately owned dumpster not owned by him. No person shall place nonrecyclables at a recycling center.

(Code 2006, § 9.10; Ord. No. O9-4-91, 9-24-1991; Ord. No. O1-1-92, 1-28-1992)

#### **9-1-11 Obedience to Officers**

No person shall resist or interfere with any officer of the village while such officer is doing any act in his official capacity and with lawful authority, nor shall any person refuse to assist an officer in carrying out his duties when so requested by the officer.

(Code 2006, § 9.11)

#### **9-1-12 Open Cisterns, Wells, Basements or Other Dangerous Excavations Prohibited**

No person shall have or permit on any premises owned or occupied by him any open cisterns, cesspools, wells, unused basements, excavations or other dangerous openings. All such places shall be filled, securely covered or fastened in such manner as to prevent injury to any person and any cover shall be of such design, size and weight that the same cannot be removed by small children.

### **9-1-13 Abandoned or Unattended Refrigerators, etc., Prohibited**

No person shall leave or permit to remain outside any dwelling, building or other structure or within any unoccupied or abandoned building, dwelling or other structure under his control in a place accessible to children any abandoned, unattended or discarded ice box, refrigerator or other container having an airtight door or lid, snap lock or other locking device which may not be released from the inside unless such door or lid, snap lock or other locking device has been removed from such ice box, refrigerator or container or unless such container is displayed for sale on the premises of the owner or his agent and is securely locked or fastened.

(Code 2006, § 9.13) State law reference— Abandoned refrigerators and iceboxes, Wis. Stats. § 167.25.

### **9-1-15 Curfew**

#### **(A) Hours.**

(1) *Specified.* No child under the age of 17 years shall loiter, idle or remain upon any street, alley or other public place in the village between 11:00 p.m. and 5:00 a.m. the next day, unless such child is accompanied by his parent, guardian or other adult person having legal custody of such child.

#### **(2) Exceptions.**

(a) This section shall not apply to a child under the age of 17 years:

(i) Who is performing an errand as directed by his parent, guardian or person having lawful custody;

(ii) Who is on his own premises or in the areas immediately adjacent thereto;

(iii) Whose employment makes it necessary to be upon the streets, alleys or public places or in any motor vehicle during such hours; and

(iv) Who is returning home from a supervised school, church or civic function.

(b) These exceptions shall not, however, permit a child under the age of 17 years to unnecessarily loiter about the streets, alleys or public places or be in a parked motor vehicle on the public streets.

(B) *Parental Violation.* No parent, guardian or other person having legal custody of a child under the age of 17 years shall permit such child to loiter, idle or remain upon any street, alley or other public place in the village between 11:00 p.m. and 5:00 a.m. the next day, unless such child is accompanied by his parent, guardian or other adult person having legal custody of such child.

- (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 such person, shall permit a child under the age of 17 years 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 child is accompanied by his parent, guardian or other adult person having legal custody of such child.
- (D) *Responsibility of Operators of Hotels, Motels and Roominghouses.* No person operating a hotel, motel, lodginghouse or roominghouse within the village, or any agent, servant or employee of such person, shall permit any child under the age of 17 years to visit, idle, wander or stroll in any portion of such hotel, motel, lodginghouse or roominghouse between the hours of 10:00 p.m. and 7:00 a.m. the next day, unless such child is accompanied by his parent, guardian or other adult person having legal custody of such child.
- (E) *Loitering in School and Playground areas.* No person not in official attendance or on official school business shall enter into, congregate, loiter, wander, stroll, stand or play in any school building or in or about any playground area adjacent thereto within the village between the hours of 8:00 a.m. and 4:00 p.m. on official school days.
- (F) *Detaining a Child.* A child believed to be violating the provisions of this division shall be taken to the police department or the county sheriff's department for proper identification. Any law enforcement officer on duty may detain any child violating subsection (A), (C), (D) or (E) of this section until such time as the parent, guardian or other adult person having legal custody of the child has been immediately notified and the person so notified has, as soon as reasonably possible thereafter, reported to the police/public safety department or the sheriff's office for the purpose of taking the child into custody and has signed a release for him.
- (G) *Warning.* The first time a child is detained by law enforcement officers as provided in subsection (F) of this section, the parent, guardian or person having legal custody shall be advised as to the provisions of this section; and any violation of this section occurring thereafter by this child or any other child under such adult's care or custody shall result in a penalty being imposed as provided in subsection (H) of this section.
- (H) *Penalty.*
- (1) Any parent, guardian or person having legal custody of a child described in subsection (A), (C), (D) or (E) of this section who has been warned in the manner provided in subsection (G) of this section and who thereafter violates any of the provisions of this section shall be subject to a penalty as provided in Ordinance 1-1-13
  - (2) Any child who violates this section after being detained and released under subsection (F) of this section shall be dealt with under Wis. Stats. Ch. 48.

(Code 2006, § 9.15) State law reference— Curfew regarding truancy, Wis. Stats. §§ 118.163(2)(i), 948.342(1g)(i).

### **9-1-17 Smoking Regulations**

Section 101.123, Wis. Stats., as amended from time to time, is adopted by reference and incorporated as though fully set forth herein, except for the definition of "enclosed place," "smoking," and "tobacco product".

(A) *Definitions.* In addition to those definitions set forth in Wis. Stat. Sec. 101.123 the following definitions shall apply to this ordinance:

- (1) *Enclosed Place* means all space between a floor and a ceiling that is bounded by walls, doors, or windows, whether open or closed, covering more than 50 percent 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 18 by 16 mesh count is not a wall.
- (2) *Smoking* means burning or holding, or inhaling or exhaling smoke from a tobacco containing product and any electronic smoking device that can be used to deliver nicotine and any other substances to the person inhaling from the device included in the following:
  - (a) A lighted cigar.
  - (b) A lighted cigarette.
  - (c) A lighted pipe.
  - (d) Any other lighted smoking equipment.
  - (e) An electronic cigarette.
  - (f) An electronic cigar.
  - (g) An electronic pipe.
- (3) *Tobacco and Tobacco Related Devices* mean any form of tobacco prepared in a manner suitable for smoking but not including a cigarette and shall include electronic cigarettes as defined as any electronic smoking device that can be used to deliver nicotine or any other substances to the person inhaling from the device. The term shall include such devices whether they are manufactured as electronic cigarettes, electronic cigars, electronic pipes or any other product name.
  - (a) *Smoking* means burning or holding, or inhaling or exhaling smoke from, any of the following items containing tobacco and an electronic smoking device that can be used to deliver nicotine or any other substances to the person inhaling from the device, any of the following:

(B) *Prohibition Against Smoking.*

- (1) Except as provided in subsection (3), no person may smoke in any of the following enclosed places:
  - (a) The state capitol.
  - (b) Residence halls or dormitories owned or operated by a college or university.



- (c) Child care centers.
  - (d) Educational facilities.
  - (e) Inpatient health care facilities.
  - (f) Theaters.
  - (g) Correctional facilities.
  - (h) State institutions.
  - (i) Restaurants
  - (j) Taverns.
  - (k) Private clubs.
  - (l) Retail establishments.
  - (m) Common areas of multiple-unit residential properties.
  - (n) Lodging establishments.
  - (o) State, county, city, village, or town buildings.
  - (p) All enclosed places, other than those listed in subsections 1g. to 8r., that are places of employment or that are public places.
- (2) No person may smoke at any of the following outdoor locations:
- (a) In the immediate vicinity of the state capitol.
  - (b) Anywhere on the premises of a child care center when children who are receiving child care services are present.
  - (c) Anywhere on the grounds of a Type 1 juvenile correctional facility.
  - (d) A location that is 25 feet or less from a residence hall or dormitory that is owned or operated by the Board of Regents of the University of Wisconsin System.
  - (e) Any property, inside or outside, owned by the Ashwaubenon School District.

(f) Any property owned by the Village where a sign has been erected to prohibit smoking.

(3) No person may smoke in any of the following:

(a) A sports arena.

(b) A bus shelter.

(c) A public conveyance.

(d) Any Village owned vehicle.

(C) *Responsibility of Persons in Charge*

(1) No person in charge may allow any person to smoke in violation of subsection (B) at a location that is under the control or direction of the person in charge.

(2) A person in charge may not provide matches, ashtrays, or other equipment for smoking at the location where smoking is prohibited.

(3) A person in charge shall make reasonable efforts to prohibit persons from smoking at a location where smoking is prohibited by doing all of the following:

(a) Posting signs setting forth the prohibition and providing other appropriate notification and information concerning the prohibition.

(b) Refusing to serve a person, if the person is smoking in a restaurant, tavern, or private club.

(c) Asking a person who is smoking to refrain from smoking and, if the person refuses to do so, asking the person to leave the location.

(4) If a person refuses to leave a location after being requested to do so as provided in subsection C(3)(c), the person in charge shall immediately notify an appropriate law enforcement agency of the violation.

(5) A person in charge may take measures in addition to those listed in subsection (B) to prevent persons from being exposed to others who are smoking or to further ensure compliance with this section.

(6) A person in charge of a restaurant, tavern, private club, or retail establishment within the Village may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern, private club, or retail establishment where customers, employees, or persons associated with the restaurant, private club, or retail establishment may smoke.

(D) *Exceptions.* The prohibition against smoking in subsection (B) does not apply to the following:

- (1) A private residence.
- (2) A room used by only one person in an assisted living facility as his or her residence.
- (3) A room in an assisted living facility in which two or more persons reside if every person who lives in that room smokes and each of those persons has made a written request to the person in charge of the assisted living facility to be placed in a room where smoking is allowed.
- (4) A retail tobacco store that is in existence on June 3, 2009, and in which only the smoking of cigars and pipes is allowed.
- (5) A tobacco bar that is in existence on June 3, 2009, and in which only the smoking of cigars and pipes is allowed.
- (6) Retail e-cigarette store provided the store is located in a free-standing structure occupied solely by the e-cigarette retail business.

(E) *Penalties*

- (1) Any person who violates subsection (2) shall be subject to a forfeiture of not less than \$100.00 nor more than \$250.00 for each violation.
  - (2) Except as provided in paragraph (dm) or (em), any person in charge who violates subsection (2m)(b) to (d) shall be subject to a forfeiture of \$100.00 for each violation.
  - (3) For violations subject to the forfeiture under paragraph (d), if the person in charge has not previously received a warning notice for a violation of subsection (2m)(b) to (d), the law enforcement officer shall issue the person in charge a warning notice and may not issue a citation.
  - (4) No person in charge may be required under paragraph (d) to forfeit more than \$100.00 in total for all violations of subsection (2m)(b) to (d) occurring on a single day.
- (F) *Injunction.* Notwithstanding [Wis. Stats.] § 165.60, state or local officials or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of this section.

- (1) No person shall smoke on outside property owned by the Ashwaubenon School District.
- (2) No person shall smoke on outside property owned by the village where a sign has been erected to prohibit smoking. Smoking is prohibited in all village vehicles.

(Ord. No. O6-3-10, § 1, 6-23-2010; Ord. No. O6-2-14, § 1, 6-24-2014; Ord. No. O9-1-14, § 1, 9-23-2014) Editor's note— Ord. No. O6-3-10, adopted June 23, 2010, repealed and recreated § 9-17 in its entirety to read as herein set out. Former § 9-17 pertained to similar subject matter and derived from § 9.17 of the 2006 Code; Ord. No. 11-1-82, adopted Nov. 23, 1982; Ord. No. O11-1-92, adopted Nov. 24, 1992; and Ord. No. O2-4-94, adopted Feb. 22, 1994.

## 9-1-18 Drone Use at Special Events

- (A) *Special Event Defined.* For purposes of this Section, Special Event shall have the same meaning as defined under Ashwaubenon Municipal Code Section 6-11-456.
- (B) *Prohibited.* It shall be unlawful for any person or entity to fly or operate a drone, as defined in Wis. Stat. §175.55(1)(a), below an altitude of 400 feet within the designated boundaries of a Special Event during the scheduled time of the event. This subsection shall not apply to authorized public safety agencies or operators having obtained approval from the Village's designee or event organizer or from the Federal Aviation Administration.

(Ord. No. O5-1-17, 5-26-2017)

### **9-1-25 Obscene Material and Performances Prohibited**

- (A) *Prohibited Acts.* No person shall do any of the following with knowledge of the character and content of the material or performance:
  - (1) Import, print, advertise, sell, have in his possession for sale or publish, exhibit or transfer commercially any obscene material;
  - (2) Advertise, produce or perform in any obscene performance;
  - (3) Have in his possession with intent to transfer or exhibit to a person under the age of 18 years any obscene material;
  - (4) Transfer or exhibit any obscene material to a person under the age of 18 years; and
  - (5) Require as a condition to the purchase of periodicals that a retailer accept obscene material.
- (B) *Determination.* In determining whether material is obscene, individual pictures or passages shall be examined in the context of the work in which they appear.
- (C) *Definitions.* For purposes of this section:
  - (1) *Knowingly* means having general knowledge of, reason to know or a belief or ground for belief which warrants further inspection or inquiry of both:
    - (a) 1. The character and content of any material described herein which is reasonably susceptible of examination by the defendant.

- (b) 2. The age of the minor, provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.
- (2) *Minor* means any person under the age of 17 years.
- (3) *Minors, Harmful to*, means that quality of any description or representation in whatever form of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when it:
  - (a) Predominantly appeals to the prurient, shameful or morbid interest of minors.
  - (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors.
  - (c) Lacks serious literary, artistic, political or scientific value if taken as a whole.
- (4) *Nudity* means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; the showing of the female breast with less than the 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.
- (5) *Obscene* means a writing, picture, sound recording, videotape or file.
- (6) *Obscene Performance* means a live exhibition before an audience which:
  - (a) The average person, applying contemporary community standards, would find appeals to the prurient interest if taken as a whole.
  - (b) Under contemporary community standards describes or shows sexual conduct in a patently offensive way.

- (c) Lacks serious literary, artistic, political or scientific value if taken as a whole.
- (7) *Sadomasochistic Abuse* means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
- (8) *Sexual Conduct* means the commission or simulation of any of the following: sexual intercourse, sodomy, bestiality, necrophilia, human excretion, masturbation, sadism, masochism, fellatio, cunnilingus, lewd exhibition of human genitals or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person is a female, a breast.
- (9) *Sexual Excitement* means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (D) *Sales or Loans to Minors*. No person shall knowingly sell or loan for monetary consideration to a minor:
  - (1) Any picture, photograph, drawing, sculpture, motion picture film, videotape or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sadomasochistic abuse which is harmful to minors.
  - (2) Any book, pamphlet, magazine, printed matter, however reproduced, or sound recording which contains any matter enumerated in subsection (4)(a) of this section, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse which is harmful to minors.
- (E) *Exhibitions*. No person shall knowingly exhibit for a monetary consideration to a minor, sell to a minor an admission ticket or pass or admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sadomasochistic abuse which is harmful to minors.

(Code 2006, § 9.25; Ord. No. 4-3-86, 4-22-1986) State law reference— Obscenity, Wis. Stats. § 944.20 et seq.

### **9-1-26 Trespassing in Vehicles**

No person shall enter a motor vehicle, aircraft or watercraft or any part thereof belonging to another without the consent of the person in lawful possession of the vehicle, aircraft or watercraft.

(Code 2006, § 9.26; Ord. No. O6-4-89, 6-27-1989) State law reference— Entry into a locked vehicle, Wis. Stats. § 943.11.

### **9-1-27 Traps Restricted**

No person shall use a killer trap (conibear-type trap) or steel-jawed (leg hold) trap within the village. Live traps that do not injure the animal are not prohibited by this section.

### 9-1-28 Shooting Arrows Prohibited

No person shall shoot arrows within the village unless legally hunting with a bow and arrow or a crossbow.

(Code 2006, § 9.28; Ord. No. O8-4-88, 8-23-1988; Ord. No. 9-1-98, 9-8-1998), Ord. No. O5-4-15 , 05-26-15

### 9-1-29 Truancy Offenses

- (A) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Habitual Truant* means a pupil who is absent from school without an acceptable excuse under Wis. Stats. §§ 118.15 and 118.16(4), for part or all of five or more days in which school is held during a semester.

*Truancy* means any absence of part or all of one or more days from school during which the school attendance officer, principal or teacher, has not been notified of a legal excuse of such absence by the parent or the legal guardian of the absent pupil and also means intermittent attendance carried on for the purpose of defeating the intent of Wis. Stats. § 118.15.

*Truant* means a pupil who is absent from school without an acceptable excuse under Wis. Stats. §§ 118.15 and 118.16(4), as from time to time may be amended, for all or part of any day on which school is held during a semester.

- (B) *Penalties.*

- (1) Any pupil under the age of 18 years of age found by the court to be a truant shall be subject to one or more of the following:
  - (a) An order for the pupil to attend school;
  - (b) Subject to Wis. Stats. § 938.37, a forfeiture of not more than \$50.00 plus costs for first violation, or a forfeiture of not more than \$100.00 plus costs for any second or subsequent violation committed within 12 months of a previous violation up to a cumulative maximum of not more than \$500.00 for all violations committed during a school semester;
  - (c) All or part of the forfeiture plus costs may be assessed against the pupil, the pupil's parent or guardian, or both.
- (2) Any pupil under the age of 18 years of age found by the court to be a habitual truant shall be subject to one or more of the following:
  - (a) Suspension of the pupil's operating privilege for not less than 30 days nor more than one year. If this penalty is imposed, the court shall immediately take possession of any suspended license and forward it together with a notice stating the reasons for and the duration of the suspension;

- (b) An order for the pupil to participate in counseling, a supervised work program, or other community service as described in Wis. Stats. § 938.34(5g). The costs of any such counseling, supervised work program, or other community service work may be assessed against the pupil, the parent or guardian of the pupil, or both;
  - (c) An order for the pupil to remain at home except during the hours in which the pupil is attending religious worship or school program, including travel time required to get to and from the place of worship or school program (the order may permit the pupil to leave his home if the pupil is accompanied by a parent or guardian);
  - (d) An order for the pupil to attend an educational program as described in Wis. Stat. § 938.34(7d);
  - (e) An order for the pupil to attend school;
  - (f) Subject to Wis. Stat. § 938.37, a forfeiture of not more than \$500.00 plus costs for each occurrence. All or part of the forfeiture plus costs may be assessed against the pupil, the pupil's parent or guardian of the pupil, or both;
  - (g) Any other reasonable conditions consistent with this subsection, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults;
  - (h) An order placing the pupil under formal or informal supervision as described in Wis. Stat. § 938.34(2), for up to one year;
  - (i) An order for the pupil'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 the school with the pupil, or both.
- (C) *Contributing to Truancy.*
- (1) Any person 18 years of age or older who, by act or omission, knowingly encourages or contributes to the truancy of a pupil shall be subject to the forfeiture of not more than \$200.00 plus costs, and upon default of the payment of the forfeiture on the costs of the prosecution, shall be imprisoned in the county jail until said forfeiture and costs are paid, but not to exceed 90 days.
  - (2) An act or omission contributes to a truancy of a pupil whether or not the pupil 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 pupil to be truant.

(Code 2006, § 9.29; Ord. No. O11-4-88, 11-22-1988; Ord. No. O9-1-98, 9-8-1998)

### **9-1-30 Fraudulent Return of Merchandise**

No person shall return merchandise to a merchant for the purpose of claiming a cash refund or credit if the person deceives the merchant by doing any of the following:



- (A) Represents that such person purchased the merchandise when the person did not purchase it.
- (B) Represents that the merchandise was purchased from a particular merchant when it was not purchased from that merchant.
- (C) Represents that the merchandise was purchased for a particular price when it was purchased for a lower price.
- (D) Gives the merchant a false name or address.

(Code 2006, § 9.30; Ord. No. O2-2-89, 2-28-1989)

### **9-1-31 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) *Absconding Without Payment of Rent.* 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 premises by the tenant and the nonpayment of such rent continues for a period of five days after vacation of the premises; or
  - (2) *Insufficient Funds.* 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 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 Wis. Admin. Code Ch. AG 134, Wis. Stats. Ch. 704, and Wis. Stat. Sec. 990.001(1). 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.* An officer may issue a citation only when the complainant provides the following:
  - (1) *Tenant Information.* 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) *Amount of Rent Due.* The amount of rent due, the date it was due, the date the tenant actually vacated the premises and testimony that the rent remained unpaid for not less than five 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) *Unredeemable Payment*; proof of receipt of written demand; time limit. 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 days have elapsed since the demand was received and no payment has been made.

(Code 2006, § 9.31; Ord. No. O9-3-90, 9-25-1990)

### **9-1-32 Possession of Cigarettes, Tobacco and Electronic Device Products by Minors**

- (A) No person under 18 years of age may possess any cigarette, tobacco product or tobacco related devices and which shall include any electronic smoking device that can be used to deliver nicotine or any other substances to the person inhaling from the device as defined in section 9-17(1) of the Ashwaubenon Municipal Code.
- (B) A person under 18 years of age may purchase or possess such products for the sole purpose of resale in the course of employment during his working hours if employed by a retailer licensed under Wis. Stats. § 134.65(1).
- (C) Persons under the age of 18 years shall be penalized \$25.00, plus costs.
- (D) No retailer may place a vending machine within 500 feet of a school.
- (E) If a written agreement binding on a vending machine operator governs the location of his vending machine which is located within 500 feet of a school, the vending machine operator shall remove the vending machine on the date that the written agreement expires or would be extended or renewed or on July 1, 1993, whichever occurs first.
- (F) No retailer may keep a vending machine in any public place that is open to persons under the age of 18 years, unless all of the following apply:
- (1) The vending machine is in a place where it is ordinarily in the immediate vicinity, plain view and control of an employee.
  - (2) The vending machine is in a place where it is inaccessible to the public when the premises are closed.
- (G) The person who ultimately controls, governs or directs the activities within the premises where the vending machine is located shall ensure that an employee of the retailer remains in the immediate vicinity, plain view and control of the vending machine whenever the premises are open.
- (H) A vending machine operator shall remove all of his vending machines that are located in any place prohibited by this section by July 1, 1993.
- (I) If a written agreement binding on a vending machine operator governs a vending machine that is located in any place prohibited by this section, the vending machine operator shall remove the vending machine on the date the agreement expires, would be extended or renewed or on July 1, 1993, whichever occurs first.

(J) The penalty for vending machine violations shall be \$200.00, plus costs.

(Code 2006, § 9.32; Ord. No. O6-2-14, § 1, 6-24-2014) State law reference— Restrictions on sale or gift, Wis. Stats. §§ 134.66, 254.911.

### **9-1-33 Misuse of Statewide Emergency Services Number 911**

The village hereby adopts Wis. Stat. Sec. 146.70. Any person who intentionally dials the telephone number 911 to report an emergency, knowing in fact that the situation reported does not exist, shall be fined in accordance to the village municipal bond schedule.

(Code 2006, § 9.33; Ord. No. O10-01-92, 10-27-1992; Ord. No. O9-5-95, 9-26-1995) State law reference— Statewide emergency services number, Wis. Stats. § 146.70.

### **9-1-34 Trespass to Buildings, Structures or Businesses**

- (A) *Permission Required.* No person shall enter any building, structure, business or property of another without the permission of the owner or person in charge.
- (B) *Presumption.* Permission to enter shall be presumed when the area is normally open to the public. Permission may be withdrawn by the owner or person in charge
- (C) *Authority to Climb.* No person shall climb any utility pole within the village unless that person has been duly authorized by the village and/or the utility. No person shall attempt to remove or remove from any utility pole any village property including but not limited to flags and decorations unless that person has been duly authorized by the village and/or the utility.

(Code 2006, § 9.34; Ord. No. O4-04-93, 4-27-1993; Ord. No. O12-7-96, 12-17-1996)

### **9-1-35 Harboring Minor Without Parental Consent**

Any owner, tenant or person in control of a residence or other facility shall not allow or permit a child under the age of 18 to loiter, idle or remain in such residence or upon such property without the consent of the child's parent, guardian or spouse.

(Code 2006, § 9.35; Ord. No. O7-06-93, 7-27-1993)

### **9-1-36 Possession of Marijuana**

It is unlawful for any person to possess marijuana as defined in Wis. Stat. § 961.01(14), or any subsequent amendment thereto, subject to the exceptions in Wis. Stat. § 961.41(3g), except that if a Compliant is issued regarding an allegation of possession of more than 25 grams of marijuana or of any amount of marijuana following a conviction in the state for possession of marijuana, the subject of the complaint may not be prosecuted in municipal court for the same action that is the subject of the complaint unless the charges are dismissed or the district attorney declines to prosecute the case.

(Code 2006, § 9.36; Ord. No. O10-5-98, 10-27-1998; Ord. No. O6-3-14, § 1, 6-24-2014) State law reference— Authority to adopt this section, Wis. Stats. § 66.0107.

### **9-1-37 Sexual Offender Restrictions**

(A) *Findings and intent.*

- (1) This section is a regulatory measure aimed at protecting the health and safety of children in the Village of Ashwaubenon from the risk that sexual offenders convicted of an offense against a child may reoffend in locations close to where children congregate. Given the high rate of recidivism for sexual offenders, and that reducing opportunity and temptation is important to minimizing the risk of reoffense, there is a need to protect children where they congregate or play in public places. Therefore, the village finds and declares that sexual offenders are a serious threat to the public safety of children if regulatory measures are not in place that prohibit their presence in specified areas designated as places children commonly congregate. The Village of Ashwaubenon finds and declares that in addition to schools and daycare centers, children congregate or play at child-oriented facilities, such as parks and playgrounds.
- (2) It is not the intent of this section to impose a criminal penalty, but rather to serve the village's compelling interest to promote, protect, and improve the health, safety, and welfare of the children of the village by prohibiting convicted sexual offenders from loitering or being present in specified areas around locations where children regularly congregate in concentrated numbers. It is the further intent of this ordinance to recognize that convicted sexual offenders must reenter the community, and the Village of Ashwaubenon hereby accepts that it has a responsibility to convicted sexual offenders and the surrounding area municipalities to ensure that, in addition to promoting regulatory measures aimed at protecting children, its regulatory measures are not aimed at prohibiting convicted sexual offenders from being part of this society.

(B) *Definitions.* The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

- (1) *Child* means a person age 16 or younger for purposes of this ordinance.
- (2) *Designated offender* means any person who is required to register under Wis. Stats. § 301.45 and is under court ordered supervision by the Wisconsin Department of Corrections for any sexual offense against a child, unless the person is under the age 18 at the time of the offense and the offender was not tried and convicted of the offense as an adult.
- (4) *Loitering* means, whether in a group, crowd, or as an individual, to stand idly about, loaf, prowl, congregate, wander, stand, linger aimlessly, proceed slowly or with many stops, to delay or dawdle.
- (7) *Minor* means a person age 17 or younger.

(8) *Zones* mean:

- (a) *Loiter free zones*: The 200-foot radius surrounding all restricted zones.
- (b) *Restricted zones*: Certain areas that are designated by the Village as areas children congregate, including, but not limited to, schools, parks, playgrounds, licensed day care centers, or any other place designated by the village as a place where children are known to congregate. Restricted zones will not expand beyond the real estate parcel or parcel(s) upon which the building, park or establishment is located that instigated the Village's designation of such Restricted Zone, but will include contiguous parcels used for ancillary purposes, such as an athletic field located adjacent to a school.
- (c) *Restricted Zone Maps*: An official map, maintained by the Village, showing restricted zones designated in red and loiter free zones designated in yellow (the "restricted zone map"). The Village shall update the restricted zone map at least annually to reflect any changes in the location of restricted zones and loiter free zones. Restricted Zone Maps will be available at the Village's office and on the Village's official web site.

(C) *Prohibited Location and/or Acts*.

- (1) *Restricted Zones*. It is unlawful for any designated offender to be physically present within a restricted zone under any of the following circumstances:
  - (a) When children are present or are reasonably presumed or known to be present; or
  - (b) In a park or playground restricted zone and between 7:00 a.m. and 11:00 p.m.
  - (c) Monday through Friday, in a school or day care center Restricted Zone and between 7:00 am and 11:00 pm; or
  - (d) *Restricted Zone Exceptions*: A designated offender may be physically present on any day or time within a restricted zone if all of the following are present:
    - (i) The designated offender has official business, which is determined by the reasonable person standard; and
    - (ii) The designated offender is accompanied by another adult who is not a designated offender.
- (2) *Loiter Free Zones*: It is unlawful for a designated offender to loiter within a Restricted Zone or Loiter Free Zone.

- (3) *Holiday prohibition:* It is unlawful for any designated offender to participate in a holiday event involving children under 16 years of age, such as distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas or wearing an Easter Bunny costume on or preceding Easter. Holiday events in which the designated offender is the parent or guardian of the children involved, and no nonfamilial children are present, are exempt from this paragraph.
- (D) *Penalties.* A person who violates this section shall be punished by a forfeiture not exceeding \$2,000.00, together with the actual costs of prosecution, including attorney fees, if necessary.
- (E) *Severability.* The provisions of this section shall be deemed severable and it is expressly declared that the village board would have passed the other provisions of this section irrespective of whether or not one or more provisions may be declared invalid. If any provision of this section is held invalid, the remainder of the section shall not be affected.

(Ord. No. O5-2-08, § 1, 5-27-2008)

### **9-1-38 Sexual Offender Residency Restrictions**

- (A) *Findings and intent.*
  - (1) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses; and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.
  - (2) It is the intent of this ordinance not to impose a criminal penalty but rather to serve the village's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the village by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence.
- (B) *Definitions.* The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:
  - (1) *Child* means a person under the age of 16 for purposes of this section.

- (2) *Designated offender* means any person who is required to register under Wis. Stat. § 301.45 for any sexual offense against a child or any person who is required to register under Wis. Stat. § 301.45 and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to Wis. Stat. § 301.46(2) and (2m)
  
  - (3) *Minor* means a person under the age of 17.
  
  - (4) *Permanent residence* means a place where the person abides, lodges, or resides for 14 or more consecutive days.
  
  - (5) *Temporary Residence* means a place where the person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.
- (C) *Sexual Offender and Sexual Predator Residence, Prohibition; Penalties; Exceptions.*
- (1) *Prohibited Location of Residence.* It is unlawful for any designated offender to establish a permanent residence or temporary residence within 1,500 feet of any school, licensed day care center, park, trail, playground, place of worship, or any other place designated by the village as a place where children are known to congregate.
  
  - (2) *Prohibited Activity.* It is unlawful for any designated offender to participate in a holiday event involving children under 18 years of age, such as distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas or wearing an Easter Bunny costume on or preceding Easter. Holiday events in which the offender is the parent or guardian of the children involved, and no nonfamilial children are present, are exempt from this paragraph. Participation is to be defined as actively taking part in the event.
  
  - (3) *Measurement of Distance.*
    - (a) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to nearest outer property line of a school, licensed day care center, park, trail, playground, place of worship, or any other place designated by the village where children are known to congregate.
  
    - (b) The village clerk-treasurer shall maintain an official map showing prohibited locations as defined by this section. The clerk shall update the map at least annually to reflect any changes in the location of prohibited zones. These shall be designated on the map as child safety zones.

- (4) *Penalties.* A person who violates this section shall be punished by a forfeiture not exceeding \$500.00. Each day a person maintains a residence in violation of this ordinance constitutes a separate violation. The village may also seek equitable relief.
- (5) *Exceptions.* A designated offender residing within a prohibited area as described in this section does not commit a violation of this section if any of the following apply:
  - (a) The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stat. § 301.45 before the effective date of this section.
  - (b) The person is a minor and is not required to register under Wis. Stat. § 301.45 or 301.46.
  - (c) The school, licensed day care center, park, trail, playground, place of worship, or any other place designated by the village as a place where children are known to congregate within 2,000 feet of the persons permanent residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stat. § 301.45.
  - (d) The residence is also the primary residence of the person's parents, grandparents, siblings, spouse, or children provided that such parent, grandparent, sibling, spouse or child established the residence at least two years before the designated offender established residence at the location.
- (D) *Renting Real Property to Certain Sexual Offenders and Sexual Predators; Penalties.*
  - (1) It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to this section, if such place, structure, or part thereof, trailer or other conveyance, is located within a prohibited location zone described in section.
  - (2) A property owner's failure to comply with provision of this section shall constitute a violation of this section, and shall subject the property owner to the penalties as provided in this section.
- (E) *Severability.* The provisions of this section shall be deemed severable and it is expressly declared that the village board would have passed the other provisions of this section irrespective of whether or not one or more provisions may be declared invalid. If any provision of this ordinance or the application to any person or circumstance is held invalid, the remainder of the ordinance or the application of such other provisions to other persons or circumstances shall not be affected.

(Ord. No. O4-2-08, § 1, 4-22-2008)

### **9-1-39 Possession of Synthetic Cannabinoid or Salvia Prohibited**

- (A) *Intent.*
  - (1) The open sale of synthetic cannabinoid, commonly known as "K-2", "Spice", or by other street names, and the public consumption and use of so-called incense products and herbals is on the rise.



- (2) Synthetic cannabinoid products have yet to be tested by the Federal Drug Administration and certified as safe for human consumption; and because they are sold as incense or potpourri, there is no health or quality assurance regulation to ensure these products are safe.
- (3) The National Drug Intelligence Center of the U.S. Department of Justice indicates the adverse effects of synthetic cannabinoid, when smoked, include panic attacks, elevated pulse and blood pressure, intense hallucinations, and in some cases, seizures.
- (4) *Salvia divinorum* ("Salvia"), when smoked, produces effects similar to that of marijuana or synthetic cannabinoid on the user.
- (5) Regulation of synthetic cannabinoid and *Salvia* is necessary to promote the health, safety and welfare of the Village.

(B) *Definitions.*

- (1) *Salvia divinorum* means any plant material which contains the active chemical principle called salvinorin A.
  - (2) *Synthetic cannabinoid* includes the following chemicals, as identified by their common names: dimethylheptylpyran, "HU-210," "JWH-018," "CP-55940," "HU-331," "WIN 55,212-2," or any cannabinoid derivative designed to mimic the physical, psychological, intoxicating, narcotic or other effects of marijuana.
- (C) *Prohibition.* No person may possess or attempt to possess *Salvia divinorum* or any synthetic cannabinoid without a valid prescription or order of a practitioner who is acting in the course of his or her professional practice.
- (D) *Penalties.* Any person who shall violate any provision of this section shall forfeit not less than \$1.00 or more than \$1,000.00 for each offense.
- (E) *Severability.* If any provision of this section or the application to any person or circumstance is held invalid, the remainder of the section or the application of such other provisions to other persons or circumstances shall not be affected.

(Ord. No. O2-3-11, § 1, 2-8-2011)

### **9-1-40 Penalties**

Any person who shall violate any provision of this Chapter shall be subject to a penalty as provided in section 1-1-13 and in the forfeiture amounts as provided for in the bond schedule for the Village Municipal Court.

(Code 2006, § 9.40; Ord. No. O10-2-01, 10-9-2001)