

**CHAPTER 10**  
**PUBLIC HEALTH AND WELFARE**

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## **10.01 PUBLIC NUISANCES PROHIBITED**

- 1) No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the Town.

*Established April 17, 2001, Ordinance No. 229*

## **10.02 PUBLIC NUISANCE DEFINED**

- 1) A public nuisance is a thing, act, occupation, condition or use of property which continues for such length of time as to:
  - (a) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
  - (b) In any way render the public insecure in life or in the use of property.
  - (c) Greatly offend the public morals or decency.
  - (d) Unlawfully and substantially interfere with, obstruct, and tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property.

*Established April 17, 2001, Ordinance No. 229*

## **10.03 PUBLIC NUISANCES AFFECTING HEALTH**

- 1) The following acts, omissions, places, conditions and things are specifically declared to be public health nuisances; but such enumeration shall not be construed to exclude other health nuisances coming within the definition of Section 10.02:
  - (a) **ADULTERATED FOOD**
    - i. All decayed, adulterated or unwholesome food or drink sold or offered for sale to the public.
  - (b) **UNBURIED CARCASSES**
    - i. Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death.
  - (c) **BREEDING PLACES FOR INSECTS OR VERMIN**

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i. Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, stagnant water, scrap metal or any material in which flies, mosquitoes, disease-carrying insects, rats or other vermin can breed, except for storage of manure or fertilizer in connection with farm operations.

(d) **PRIVY VAULTS AND GARBAGE CANS**

i. Privy vaults and garbage cans which are not fly-tight.

(e) **NOXIOUS AND NUISANCE WEEDS**

i. Noxious Weed Means Canada Thistle, leafy spurge, field Bindweed and any noxious weed as defined in Wisconsin Statutes 66.0407 and any other weed designated as a noxious weed by the Department of Natural Resources by rule; to "Destroy" these weeds means the complete killing of weeds or the killing of weed plants above the surface of the ground by the use of chemicals, cutting, tillage, cropping system, pasturing livestock, or any or all of these in effective combination, at a time and in a manner as will effectually prevent the weed plants from maturing to the bloom or flower stage.

(f) **WATER POLLUTION**

i. The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage, creamery, industrial wastes or other substances.

(g) **NOXIOUS ODORS, ETC**

i. Any use of property, substances or things within the Town emitting or causing any foul, offensive, noisome, noxious or disagreeable odors, gases, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of

any appreciable number of persons within the Town.

(h) **STREET POLLUTION**

- i. Any use of property which causes any noxious or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the Town.

(i) **AIR POLLUTION**

- i. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the Town or within one (1) mile there from in such quantities as to endanger the health of persons of ordinary sensibilities threatens or causes substantial damage to property in the Town.

(j) **ANIMALS RUNNING AT LARGE**

- i. No person owning or harboring any animal shall permit such animal to run at large within the Town except within the immediate presence and effective control of such person. Further, an animal that damages or injures property or persons is not within "Effective Control" of a person responsible for it. An animal within an automobile of its owner (or other person responsible for it under this section) or in an automobile of any other person with the consent of the owner of such animal, shall be deemed to be upon the property of such owner or other person.

(k) **IMPOUNDING**

- i. Any animal running at large, with or without license, may be immediately taken into custody by any police or peace officer, and impounded in a suitable place to be arranged for or provided by the Town, not exceeding ten (10) days. The Town may impose a reasonable cost for maintenance of such animal(s).

(l) **DISPOSITION**

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i. The release of any animal so impounded shall be conditioned upon payment of the charge of maintenance at such place of impounding, subject to the conditions of Chapter 173, Wisconsin Statutes.

(m) **BARKING DOGS**

i. The keeping of howling, barking and whining dogs to the continuous annoyance and discomfort of surrounding neighbors so that their rest is broken, sleep is interrupted, and the reasonable use and enjoyment of their property disturbed, is a nuisance. Such dog(s) may be taken into custody as provided in Subsection (k).

(n) **OTHER ANIMALS**

i. The keeping or harboring of any animal which causes the continuous annoyance and discomfort of surrounding neighbors so that their rest is broken, sleep is interrupted, or the reasonable use and enjoyment of their property disturbed, is a nuisance. Such animal may be taken into custody as provided in Subsection (k).

ii. The keeping or harboring of turkeys, ducks or geese or the keeping or harboring of chickens without a valid permit on any parcel or lot in any Residential District as defined in the Zoning Ordinance, Walworth County, Wisconsin as the same may be amended from time to time.

(o) **DANGEROUS ANIMALS**

i. Whenever it shall be determined by the Town Board or in an emergency, by the Police Department, upon the duly verified complaint of at least two (2) residents of the Town filed with the Town, that the animal is habitually fierce, vicious, dangerous, or is in the habit of attacking other animals, the owner of such animal, within twenty-four (24) hours after service by the Town or Town Board of written notice upon the owner to that effect, personally served upon such owner or forwarded to the owner at

their usual address in the regular course of the United States mail, shall remove such animal from the Town or enclose it within an enclosure or walls sufficient to keep the animal from endangering any person or other animal and sufficient to prevent escape by said animal from the structure. The enclosure shall be locked in such a fashion to prevent children from gaining access to said enclosure. If the same does not, the Town Board may require the owner to reconstruct the enclosure to meet the requirements of this ordinance. Whenever such animal shall be so enclosed, a sign shall be displayed at every point of entrance to such enclosure, giving warning of the presence of such animal so confined. Failure of the owner to remove or enclose such animal or to construct an enclosure meeting the requirements of this ordinance, each day subsequent to the service of any notices to either enclose the animal or create an enclosure within the meaning of this ordinance shall be deemed a separate violation of the provisions of this Section. Such animal may be impounded if the animal poses a threat to the health or safety of humans or other animals.

(p) **EMERGENCY CIRCUMSTANCES**

- i. Any animal which shall be known to be or which there is good reason to believe is mad, vicious or dangerous to the public or which presents an imminent danger to a person(s) or property may be killed by the Police if other restraining actions were tried and failed; or immediate action is necessary.

(q) **RIGHT OF ENTRY**

- i. All police officers may enter on private premises for the purpose of finding, taking or killing such animal.

(r) **DISPOSAL**

- i. When any such animal has been killed, the police shall have the same removed and buried or disposed

of unless the owner or the person in charge thereof shall agree to see that the carcass of such animal is buried.

(s) **OWNER TO ASSIST**

- i. Any person owning or having in their possession, under their care or control any animal which is commonly considered to be called dangerous, vicious or which presents an imminent danger to a person(s) or property shall permit the police to take and kill such animal and shall lend all reasonable assistance to any such officer so doing.

(t) **DUTY OF OWNER IN CASES OF DOG BITE**

- i. Every owner or person keeping or harboring a dog who knows that such dog has bitten any person shall immediately report such fact to the Town Police Department and shall keep such dog confined for not less than fourteen (14) days or for such period of time as the Police Department may direct.
- ii. The owner or keeper of any such dog shall surrender the dog to the Police Department upon demand for examination and shall pay all expenses incurred.

**2) LAWN FERTILIZER APPLICATION CONTROL**

(a) **PURPOSE**

- i. The purpose of this ordinance is to define regulations which will aid the Town in managing and protecting its water resources which are enjoyed by its residents and other users.

(b) **DEFINITIONS**

- i. **"Commercial Applicator"** is a person who is engaged in the business of applying fertilizer for hire.
- ii. **"Fertilizer"** means a substance containing one (1) or more recognized plant nutrients that is used for its plant nutrient content and designed for use or claimed to have value in promoting plant growth.

Fertilizer does not include animal and vegetable manures that are not manipulated, marl, lime, limestone, and other products, which may be exempted by State Law.

- iii. **"Non-commercial Applicator"** is a person who applies fertilizer but who is not a Commercial Lawn Fertilizer Applicator.

(c) **FERTILIZER CONTAINING PHOSPHORUS PROHIBITED**

- i. No person, firm, corporation, franchise, or commercial or noncommercial applicator, including homeowners or renters, shall apply any lawn fertilizer, liquid or granular, which contains any amount of phosphorus or other compound containing phosphorus, such as phosphate, within that portion of the Delavan Lake Sanitary District which lies within the boundaries of the Town of Delavan except:
  - 1. The naturally occurring phosphorus in unadulterated natural or organic fertilizing products such as yard waste compost.
  - 2. As otherwise provided in Subsection (f) of this Section.

(d) **IMPERVIOUS SURFACES AND DRAINAGE WAYS**

- i. No person shall apply any fertilizer to impervious surfaces, areas within drainage ditches, or waterways.

(e) **BUFFER ZONE**

i. **FERTILIZERS SHALL NOT BE APPLIED:**

- 1. To any established natural buffer zones or delineated wetland.
- 2. Below the Ordinary High-Water Mark as established by the Department of Natural Resources or other state regulation.
- 3. Within ten (10') feet of any wetland or water

resource.

(f) **EXEMPTIONS**

i. The following are exemptions to the specified provisions of this section:

1. The prohibition against use of fertilizer Subsection (c) shall not apply to turf and lawn areas which soil tests confirm are below established phosphorus levels for typical area soils. The lawn fertilizer application shall not contain an amount of phosphorus exceeding the amount of phosphorus and the appropriate application rate recommended in the soil test evaluation. Phosphorus applied as lawn fertilizer pursuant to the aforementioned exemption shall be integrated into the soil where it is immobilized and generally protected from loss by runoff.

2. This section in its entirety shall not apply to any farming or agricultural business, provided the use of fertilizers as defined herein is related to the growth of a product or maintenance of growing fields. Appropriate steps shall be taken to integrate the fertilizer into the soil where it is immobilized and generally protected from loss by runoff. This exemption shall not apply to lawn areas of said farm or agricultural business.

*Established April 17, 2001, Ordinance No. 229; revised February 18, 2003, Ordinance No. 236, Ordinance 369*

**10.04 PUBLIC NUISANCES OFFENDING MORALS AND DECENCY**

1) The following acts, omissions, places, conditions and things are specifically declared to be public nuisances offending public morals and decency; but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of Section 10.02:

(a) **DISORDERLY HOUSES**

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

(b) **GAMBLING DEVICES**

i. All gambling devices and slot machines.

(c) **UNLICENSED SALE OF LIQUOR AND BEER**

i. All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided for by the ordinances of the Town.

(d) **CONTINUOUS VIOLATION OF TOWN ORDINANCES**

i. Any place or premises within the Town where town ordinances or state laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.

(e) **ILLEGAL DRINKING**

i. Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of State laws.

(f) **OBSCENITY PROHIBITED**

i. Whoever does any of the following with knowledge of the character and content of the material or performance is guilty of a violation of this ordinance:

1. Imports, prints, advertises, sells, has in his possession for sale, or publishes, exhibits, or transfers commercially any obscene material; or
2. Advertises, produces or performs in any

obscene performance; or

3. Has in his or her possession, with intent to transfer or exhibit to a person under the age of eighteen (18) years, any obscene material.

(g) **OBSCENE MATERIAL** means a writing, picture, sound recording or film and "Obscene Performance" means a live exhibition which:

- i. The average person, applying contemporary community standards, would find appeals to the prurient interest if taken as a whole;
- ii. Under contemporary community standards, described or shows sexual conduct in a patently offensive way; and
- iii. Lacks serious literary, artistic, political or scientific value, if taken as a whole.

(h) **SEXUAL CONDUCT** means the commission or simulation of any of the following: sexual intercourse, sodomy, bestiality, necrophilia, human excretion, masturbation, sadism, masochism, fellatio, cunnilingus or lewd exhibition of human genitals.

(i) Any person who shall violate any provision of this chapter or any order, rule or regulation made hereunder shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

## 2) **PUBLIC INDECENCY**

(a) **PUBLIC INDECENCY DEFINED ANY PERSON WHO IN PUBLIC INTENTIONALLY OR KNOWINGLY:**

- i. Engages in sexual intercourse;
- ii. Engages in sexual contact;
- iii. Appears in a state of nudity; or
- iv. Engages in sexually explicit conduct;
- v. Commits Public Indecency.

(b) **OTHER DEFINITIONS**

- i. **SEXUAL INTERCOURSE** has the meaning as stated in Section 948.01(6), Wisconsin Statutes.
- ii. **SEXUAL CONTACT** has the meaning as stated in Section 948.01 (5) (a), Wisconsin Statutes.

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- iii. **SEXUALLY EXPLICIT CONDUCT** has the meaning as stated in Section 948.01(7) (a), Wisconsin Statutes.
- iv. **NUDITY** has the meaning as stated in Section 942.08(1) (a), Wisconsin Statutes.
- v. **IN PUBLIC** has the meaning as stated in Section 944.15(1), Wisconsin Statutes.
- vi. **INTENTIONALLY** has the meaning as stated in Section 939.23(3), Wisconsin Statutes.
- vii. **KNOWINGLY** means that the actor believes that the specified fact exists.

(c) **PUBLIC INDECENCY PROHIBITED AND PENALTY FOR VIOLATION**

- i. Public Indecency is prohibited, and each violation may result in penalties as specified in Section 25.04 of the Municipal Code.

(d) **EXCEPTIONS**

i. **THE PROHIBITION SET FORTH ABOVE SHALL NOT APPLY TO:**

- 1. Any child less than ten (10) years of age; or
- 2. Any individual exposing her own female breast in the process of breast feeding a child less than two (2) years of age.

*Established April 17, 2001, Ordinance No. 229*

**10.05 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY**

- 1) The following acts, omissions, places, conditions and things are declared to be public nuisances affecting peace and safety; but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the definition of Section 10.02:

(a) **SIGNS, BILLBOARDS AND RELATED MATTERS**

- i. All signs, billboards, awnings, and other similar structures over or near streets, sidewalks, public grounds, or places frequented by the public and not maintained in a proper state of repair, not constructed in a structurally sound manner or permitted to become un-structurally sound so as to depreciate property values or so as to endanger the

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health, safety, morals or welfare of the public.

- ii. All signs, billboards, awnings, and other similar structures over, near or in view of any public highway, street, sidewalk, public grounds or places frequented by the public in use for more than thirty (30) days and not constructed of a material suitable for outdoor use or which becomes unsightly and/or in a state of disrepair. This does not apply to political election campaign signs.
- iii. All signs, billboards, notices, postings or other similar items affixed to any power or utility pole, readily visible from any roadway, without the consent of the power or utility company owning the pole.
- iv. All signs posted with in any roadway right of way within the Town of Delavan. This does not apply to standard notices placed on power or utility poles by the utility company owning the poles.

(b) **ILLEGAL BUILDINGS**

- i. All buildings erected, repaired or altered in violation of Town ordinances relating to materials and manner of construction of buildings and structures within the Town.

(c) **UNAUTHORIZED TRAFFIC SIGNS**

- i. All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing which purports to be or may be mistaken as official traffic control devices, railroad signs, signals or which, because of their color, location, brilliance or manner of operation, interferes with the effectiveness of any such device, sign or signal.

(d) **OBSTRUCTION OF INTERSECTIONS**

- i. All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.

(e) **DANGEROUS TREES**

i. All trees which are a menace to public safety or are the cause of substantial annoyance to the general public. Any tree whose limbs project over and are less than eight (8') feet above any public sidewalk, or less than ten (10') feet above any street or other public place shall be deemed to be a dangerous tree.

ii. **REQUIRED TRIMMING OF TREES**

1. All trees in the Town shall be pruned and trimmed so that no branch thereof shall grow or hang lower than eight (8') feet above the level of the sidewalk at the place where such trees are standing, nor ten (10') feet above the level of the street.

2. All trees standing upon private property in the Town, the branches of which extend over the line of the street, shall be pruned and trimmed so that no branch shall hang lower than eight (8') feet above the level of the sidewalk nor lower than ten (10') feet above the level of the street, so no branches which are dead, broken or otherwise dangerous shall be likely to fall and do injury to the public.

iii. **NOTICE TO OWNER**

1. The Town Chair or designee shall notify the owner of any premises not conforming to this section to prune and trim the trees in accordance with the provisions of this section and if the owner fails to comply within ten (10) days of the date of such notice, the Town Chair or designee may cause the same to be trimmed and pruned by the Town in accordance with this Chapter.

iv. **DEVIATIONS**

1. The Town Chair or designee may authorize deviations from the requirements herein under special circumstances based on his/her

judgment.

**v. INJURY TO TREES**

1. No person shall cut down, destroy, injure, mutilate or otherwise impair the value of any ornamental shade tree in and along any of the streets or upon the public grounds of the Town without first obtaining permission of the Town Board for that purpose.
2. Any person found guilty of destroying or injuring any tree as described herein shall be liable for the cost of repairing or replacing such tree(s) and/or damages pursuant to Section 26.09, Wisconsin Statutes, in addition to the penalty set forth in Section 25.04 of this Municipal.

**(f) DILAPIDATED BUILDINGS**

- i. All buildings or structures so old dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.

**(g) LOW-HANGING WIRES AND CABLES**

- i. All wires and cables over streets, alleys or public grounds which are strung less than fifteen (15') feet above the surface thereof.

**(h) OBSTRUCTIONS OF STREETS; EXCAVATIONS**

- i. All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the ordinances of the Town but including those which, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished or which do not conform to the permit.

**(i) UNLAWFUL ASSEMBLIES**

- i. Any unauthorized or unlawful use of property abutting on a public street, alley, sidewalk or of

a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.

(j) **BLIGHTED BUILDINGS AND PREMISES**

i. Premises existing within the Town which are blighted because of faulty design or construction, failure to maintain in a proper state of repair, improper management, unsound fences, and other conditions which tend to depreciate or jeopardize property values or are otherwise detrimental to the health, safety, morals or welfare of the people of the Town.

ii. **PURPOSE**

1. Blighted premises contribute to conditions that are dangerous to the public health, safety, morals and general welfare of the people; such conditions necessitate excessive and disproportionate expenditure of public funds for public health, safety, crime prevention, fire protection and other public services, cause a drain upon public revenue and impair the efficient and economical exercise of governmental functions in such areas. Elimination of blighted premises and prevention of blighted premises in the future is in the best interest of the citizens and this shall be fostered and encouraged by this section. It is essential to the public interest that this Section be liberally construed to accomplish these purposes.

(k) **STORAGE OF JUNK, ABANDONED VEHICLES AND VEHICLE ACCESSORIES ETC., REGULATED**

i. **ABANDONMENT OF VEHICLES PROHIBITED**

1. No person shall abandon or cause to be abandoned, any vehicle unattended within the Town of Delavan.

ii. **STORAGE OF JUNK VEHICLES AND VEHICLE ACCESSORIES**

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## **PROHIBITED**

1. No person may store any junk vehicles or vehicle parts on any private property within the Town of Delavan.

### **iii. STORAGE OF JUNK PROHIBITED**

1. No person may store junked or discarded property including, refrigerators, furnaces, washing machines, stoves, machinery or machinery parts, wood, bricks, cement blocks or other unsightly debris, except in an enclosure which houses such property from public view, or upon permit issued by the Town Board.

### **iv. DEFINITIONS**

1. **"VEHICLE"** means every device in, upon, or by which any person or property is , or may be transported or drawn upon a highway, except railroad trains.
2. **"VEHICLE"** also means snowmobiles, boats and all-terrain vehicles.
3. **"ABANDONED VEHICLE"** includes but is not limited to any of the following:
  - a. A vehicle left unattended for any period of time, under such circumstances as to cause the vehicle to reasonably appear to have been abandoned.
  - b. A vehicle stored or kept on private property in a manner that violates any law, ordinance, or regulation of State, County, or other local agency having jurisdiction over the property.
  - c. A vehicle left on private property where parking is prohibited, limited or restricted, without the permission of the owner or lessee.
  - d. A vehicle left for more than forty-eight (48) hours on any public street or

grounds.

- e. A vehicle which, through disuse and/or failure to be used, remains in one location for a period of ten (10) days or more and which does not have affixed to its current vehicle license registration if such registration is required by law to legally operate on any public road, trail, water or private property.

**4. JUNK VEHICLE**

- a. Any vehicle which is partially dismantled or wrecked and which cannot be legally or safely operated.

**5. VEHICLE ACCESSORIES**

- a. Any part or parts of a vehicle.

**v. EXCEPTIONS**

1. This section shall apply to a vehicle accessory in an enclosed building or a vehicle or vehicle accessories in an appropriate storage place out of sight of the public or a depository maintained in a lawful place and manner authorized by the Town.
2. This section shall not apply to a vehicle or vehicle accessories on the premises of a business enterprise operating in a lawful place and manner when necessary for the operation of the business enterprise.
3. Special exemption can be made by the Chief of Police for cause.

**vi. ABATEMENT, REMOVAL AND IMPOUNDMENT OR SALE**

1. A vehicle found in violation of this chapter is deemed to be a public nuisance and may be impounded by the Town until lawfully claimed or disposed of as provide in Section 24.02 of this Municipal Code.

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2. Any property found to be in violation of this section is deemed to be a public nuisance and may be abated as outlined in 10.08.

(l) **DRUG OR CRIMINAL GANG HOUSE A PUBLIC NUISANCE**

- i. A drug or criminal gang house is deemed to be a public nuisance pursuant to Section 823.113 Wisconsin Statutes.
- ii. The Town Board may require by written order any premises violating this section to be put in compliance within the time specified in such order, and if the order is not complied with, may have the premises put in compliance and the cost thereof assessed as a special tax against the property.

(m) **PLACEMENT OF SNOW**

- i. No person shall place, deposit, dump, push, or cause to be placed, deposited, dumped, or pushed, any snow or ice upon any public roadway, or upon any private property without prior consent of the owner.
- ii. No person shall place, deposit, dump, push, or cause to be placed, deposited, dumped or pushed, any snow or ice, on any public roadway right of way:
  - 1. So as to restrict or obstruct traffic or restrict or obstruct vision along and upon any portion such roadway or approaches thereto; or so as to interfere with drainage of road or ditch maintenance operations, including snow removal.

*Established April 17, 2001, Ordinance No. 229, Resolution 9.2009*

**10.06 OPEN CISTERNS, WELLS, BASEMENTS OR OTHER DANGEROUS EXCAVATIONS PROHIBITED**

- 1) 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

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places shall be filled, securely covered or fenced, in such manner as to prevent injury to any person and any cover shall be of a design, size and weight that the same cannot be removed by small children.

*Established April 17, 2001, Ordinance No. 229*

#### **10.07 ABONDED OR UNATTENDED ICE BOXES, ETC., PROHIBITED**

- 1) 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 their 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 such door or lid, snap lock or other locking device from such ice box, refrigerator or container unless such container is displayed for sale on the premises of the owner or his agent and is securely locked or fastened.

*Established April 17, 2001, Ordinance No. 229*

#### **10.08 ABATEMENT OF PUBLIC NUISANCES**

##### **1) ENFORCEMENT**

- (a) The Chief of Police, Fire Chief, and Building Inspector shall enforce those provisions of this Chapter that come within the jurisdiction of their offices; and they shall make periodic inspections and inspections upon complaint to ensure that such provisions are not violated. No action shall be taken under this section to abate a public nuisance unless the officer has inspected or caused to be inspected the premises where the nuisance is alleged to exist and has satisfied himself that nuisance does in fact exist.

##### **2) SUMMARY ABATEMENT**

- (a) If the inspecting officer determines that a public nuisance exists within the Town and that there is great and immediate danger to the public health,

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safety, peace, morals or decency, the Town Board or the Town of Delavan Police Department may cause the same to be abated, and the cost thereof may be charged to the owner, occupant or person causing, permitting or maintaining the nuisance.

- (b) Notwithstanding any other provision of this section, any signs found in violation of 10.05(1)(a)(iv) may be immediately removed by the Town of Delavan Police Department, the Town of Delavan Highway Department or their agents. Such signs of minimum value may be destroyed. Other signs may be destroyed after 30 days, if unclaimed.

### **3) ABATEMENT AFTER NOTICE**

- (a) If the inspecting officer determines that a public nuisance exists on private premises but that such nuisance does not threaten great and immediate danger to the public health, safety, peace, morals or decency, they shall serve notice on the person causing or maintaining the nuisance to remove the same within ten (10) days. If such nuisance is not removed within ten (10) days, the proper officer may cause the nuisance to be removed as provided in Subsection 2), with prior approval from the Town Chair or in the Chair's absence, two (2) Supervisors, or the Town Board if the abatement cost is expected to exceed three-hundred (\$300) dollars.

### **4) OTHER METHODS NOT EXCLUDED**

- (a) Nothing in this Chapter shall be construed as prohibiting the abatement of public nuisances by the Town or its officials in accordance with the laws of the State of Wisconsin.

### **5) COURT ORDER**

- (a) Except when necessary under Subsection 2), an officer hereunder shall not use force to obtain access to private property to abate a public nuisance but shall request permission to enter upon private property and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.

## **6) SEVERABILITY**

- (a) Each section, subsection, paragraph sentence, clause, phrase, and provision of the foregoing Ordinance is and the same as hereby declared to be determined to be invalid for any reason, such determination shall not invalidate any other portion or provision thereof.

*Established April 17, 2001, Ordinance No. 229, 11.16.2010 Ordinance 311*

## **10.09 COST OF ABATEMENT**

- 1) In addition to any other penalty imposed by this Chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Town shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance; and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge. Costs may include attorney fees and any other costs associated with the abatement of the nuisance.

*Established April 17, 2001, Ordinance No. 229*

## **10.11 REGULATION OF AUTOMATIC BIRD FOGGERS**

### **1) DEFINITIONS**

- (a) **Automatic Bird Fogger** shall be defined as any device that creates a fog or mist typically containing a chemical intended to repel or kill birds.
- (b) **Label Directions** shall refer to product labeling and directions of use as approved by the United States Environmental Protection Agency or any other Federal or State Agency having jurisdiction to control or regulate product labeling.

### **2) RESTRICTIONS ON USE OF BIRD FOGGERS**

- (a) No Bird fogger may be used in any Residence or Business District as established pursuant to the provision of any applicable zoning ordinance.
- (b) All Bird foggers must be operated in strict compliance with Label Directions.

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- (c) No bird fogger may be used or employed in such a manner that it will in the application of chemicals in a manner which will contact workers or other persons directly or through drift.
- (d) Bird foggers shall only be used under circumstances where no human or non-target animals are a risk for exposure to the application directly or through drift
- (e) No bird fogger may be used in such a manner as to result in direct application of any chemical products to food crops.
- (f) No bird fogger may be placed or located within 25 feet of the nearest property boundary.
- (g) Bird foggers shall be placed in such manner that the spray nozzle is directed away from and at least 25 feet from any adjoining properties.
- (h) No more than one bird fogger may be employed per every 40,000 square feet of property area or fraction thereof within any residentially zoned district.
- (i) Bird foggers shall be operated during daylight hours only.

### **3) PENALTY**

- (a) Any person failing to comply with the provisions of this section will be subject to the penalties as provided in Section 25.04 of this Municipal Code.

*6.8.2022, Ordinance No. 405*

## **10.14 REGULATION OF NUISANCE-TYPE BUSINESSES**

### **1) PERMIT REQUIRED**

- (a) No person shall conduct within the Town any business which has a tendency to create a public nuisance, except upon permit issued by the Town Board and subject to such conditions as the Board may impose.

### **2) DEFINITION**

- (a) A business which has a tendency to create a public nuisance is one which unless properly regulated may create the condition creating a public nuisance as defined in Section 10.02 of this Municipal Code.

### **3) AUTHORITY**

Revised 2.10.26

- (a) This section is enacted pursuant to Section 66.0415, Wisconsin Statutes.

*Established April 17, 2001, Ordinance No. 229*

#### **10.15 MILK AND MILK PRODUCTS**

- 1) No person shall sell, offer or expose for sale within the Town any milk or milk product other than Grade A pasteurized milk or milk products as defined in Chapters ATCP 60 and 80, Wisconsin Administrative Code.

*Established April 17, 2001, Ordinance No. 229*

#### **10.16 PRIVIES, CESSPOOLS, ETC., PROHIBITED AFTER CONNECTION WITH SEWER**

- 1) After connection of any building used for human habitation to a sewer main, no privy, cesspool or waterless toilet shall be used in connection with such human habitation.

*Established April 17, 2001, Ordinance No. 229*

#### **10.17 PENALTIES**

- 1) Any person who shall violate any provision of this Chapter, or any regulation, rule or order made hereunder, or permit or cause a public nuisance shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

*Established April 17, 2001, Ordinance No. 229*

#### **10.20 RESIDENTIAL RENTAL LICENSING**

- 1) DEFINITIONS. The following definitions shall apply in the interpretation and enforcement of this section.

(a) "Residential dwelling" means any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

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(b) "Department" means the Wisconsin Department of agriculture, Trade and Consumer Protection.

(c) "Short-term rental" means a residential dwelling that is offered for rent for a fee and for fewer than **30** consecutive days, **consistent with Wis. Stat. § 66.0615 (1) (dk)** .

(d) "State License" means a license as a tourist rooming house, as defined in section 97.01 (15k), Wis. Stats.

(e) "Owner" means any person who alone or jointly or severally with others is the recorded or beneficial owner or has legal or equitable title to any dwelling or dwelling unit, or has charge, care or control of any dwelling unit as personal representative, trustee or guardian of the estate of the owner.

(f) "Person" includes an individual, a partnership, domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

(g) "Occupant" means a person who rents a short-term rental.

## 2) RESIDENTIAL RENTAL LICENSE REQUIRED

(a) No owner shall lease any short-term rental, as defined herein, **for more than 10 nights each year** unless, at the time the short-term rental is let, the owner possesses a valid residential rental license approved by the Town Administration Committee for the operation of that short-term rental. **Pursuant to Wis. Stat. § 66.1014 (2) (d) 2.b.**

(b) A residential rental license may be issued by the Town Clerk upon approval of the Administration Committee and proof of compliance with the following:

- i. Completion of an application for a residential rental license.

ii. Issuance by the Department of a State License as defined herein.

iii. Issuance by Walworth County of a County License as required by County ordinance. **Walworth County Ordinances Sec. 26-334.**

iv. Payment of a \$500 permit fee for a new permit or payment of a \$250 permit renewal fee if renewing an unexpired residential rental license for the same premises. The fees are non-refundable and are not pro-rated for any partial license year.

v. An expired residential rental license may be renewed within 30 days of expiration upon compliance with the requirements of this section and payment of an additional late renewal fee of \$50. A residential rental license may not be renewed more than 30 days after expiration.

(c) Each residential rental license shall expire on the next succeeding August 31, except that licenses initially issued during the period beginning on June 1 and ending on August 31 expire on August 31 of the following year. Residential rental licenses are not transferable. The license must be displayed on or near the inside of the main entrance door of the rental property.

(d) All residential rental license renewals may be approved by the Town Clerk and/or Treasurer without Administrative Committee approval.

(e) The issuance of a residential rental license does not warrant that the dwelling or dwelling unit to which it is issued is free of ordinance violations or otherwise fit for human habitation.

(f) A residential rental license may be denied if the owner of the dwelling or dwelling unit:

i. Has failed to provide all information required by the application form or has failed to sign the application form.

ii. Has provided false or incorrect information on the application form.

iii. Has failed to pay any delinquent charge relating to the real estate on which the unit is located.

iv. Does not hold a valid State License as defined herein.

(g) No owner renting a residential dwelling for periods of more than 6 but fewer than **30** consecutive days shall rent said residential dwelling unit for more than a total of 180 days within any consecutive 365-day period. **Pursuant to Wis. Stat. § 66.1014(2)(d)1.**

i. The 180-day permissible rental period shall be consecutive days.

ii. A person who rents the person's residential dwelling shall notify the clerk of the political subdivision in writing when the first rental within a 365-day period begins.

Article I.

(h) The Town of Delavan shall post and maintain a listing of residential rental licenses on the Town of Delavan's website at [www.townofdelavan.com](http://www.townofdelavan.com).

### 3) APPLICATION

(a) An application for a residential rental license shall be filed with the Town Clerk on forms provided by the Town.

(b) The application shall be signed by the owner and the owner shall provide all information requested on the form which will enable the Town to contact the

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owner, or at the option of the owner, an agent of the owner, including the street address of the dwelling and the owner's legal name.

(c) The application shall be accompanied by the fee required in this section.

(d) The application shall be accompanied by a copy of the State License issued by the Department.

#### 4) REVOCATION, SUSPENSION, OR NON-RENEWAL OF RESIDENTIAL RENTAL LICENSE

(a) The Town Administrator or Committee of the Department may revoke, suspend, or non-renew a residential rental license for violations of this section including:

i. Revocation of the State License.

ii. Fraud, misrepresentation, or false statement contained in the residential rental license application.

iii. Failure to pay any fees required to be paid under this section.

(b) No owner shall lease a short-term rental after the residential rental license is revoked, suspended, or non-renewed.

(c) Whenever an owner wishes to appeal the decision of the Town Administrator or Committee not to issue a residential rental license or the decision to revoke, suspend, or non-renew a residential rental license the owner shall, within ten business (10) days of the notice of the revocation, suspension, or non-renewal, deliver to the Town clerk, a written objection stating specific reasons for contesting the decision. Upon receipt of the written objection, the matter shall be placed on the agenda for the Town Board for a review hearing at the next regular meeting, unless the appeal is filed within four (4) days of the next meeting in

which case it shall be heard at the following meeting. The decision of the Town Board shall constitute a final decision. The Town elects not to be bound by Chapter 68, Wisconsin Statutes with respect to administrative procedure in this regard.

(d) Each license holder is obligated to complete, sign and file a quarterly room tax return and remit the applicable room tax to the Town as required by the provisions of section 3.10 of this code. Such quarterly room tax return must be signed by the license holder regardless of whether or not the license holder contracts with a third party such as VRBO, Home Away or Air BnB, or other market place provider to administer such rental or collect such tax.

(e) If the owner wishes to further contest the determination, he or she may, within thirty (30) days of receiving the written decision of the Town Board seek a review of the decision by certiorari.

5) CONFLICT WITH OTHER ORDINANCES

If any part of this ordinance is found to be in conflict with any other ordinance, including that of Walworth County, or with any other part of the Town of Delavan's ordinances, the most restrictive or highest standard shall prevail. If any part of this ordinance is explicitly prohibited by federal or state statute, that part shall not be enforced.

6) OPERATION OF SHORT-TERM RENTAL

(a) The Town hereby adopts § 26-338, 26-339, 26-340, 26-341, and 26-343, and any amendments made thereto of the Walworth County Wisconsin Code of Ordinances.

8) PENALTY

(a) An owner failing to comply with any other provisions of this section shall be subject to the penalties provided in section 10.17.

## **10.21 FIRE HYDRANT ACCESSIBILITY AND MAINTENANCE**

**1) Prohibition.** No person or entity shall do any of the following:

- a) Obstruct a fire hydrant or access to a fire hydrant in any way, including but not limited to the dumping or piling of metal or storing of personal property within five (5) feet of a fire hydrant;
- b) Erect any fence or other structure within five (5) feet of the hydrant;
- c) Plant any trees or bushes within in five (5) feet of a hydrant;
- d) Open any public fire hydrant except for the purpose of extinguishing a fire;
- e) Intentionally or recklessly damage or impair any fire hydrant.

### **2) Snow Removal Required**

- a) The owner, property manager or occupant of any property which abuts a fire hydrant shall remove all snow from an area at least four (4) feet around the hydrant within twenty-four (24) hours after snow ceases to fall.
- b) In the event that the responsible party fails to remove snow accumulations from around a fire hydrant as required in this section within twenty-four (24) hours after snow ceases to fall, the Town shall cause the snow to be removed and shall assess the cost of such removal as a special charge against the abutting real estate.

### **3) Maintenance and Testing**

- a) On or before July 1 each year, the owner of every property in the Town on which is located a fire Hydrant intended for use by the Town Fire Department shall cause such hydrant to be inspected and tested by an inspector who is certified under section SPS 305.627, Wis. Admin Code or who is otherwise qualified to conduct such testing and inspection.
- b) Not later than August 1 each year, the property owner

shall provide a written report of the results of the inspection and testing to the Town Fire Chief or his designee.

**4) Penalty**

- a) Any person failing to comply with any of the provisions of this section shall, upon conviction, be subject to a forfeiture of not less than \$10 nor more than \$100, together with statutory cost, for each violation. Each day a violation continues or occurs shall constitute a separate offense.

*Established February 19, 2019, Ordinance No. 376*

**10.22 CHILD SAFETY ZONES**

**1) Purpose; findings**

This section is a regulatory measure aimed at protecting the health and safety of children in the Town of Delavan from the risk that convicted sex offenders may reoffend in locations where children are present and tend to congregate. The Town finds and declares the sex offenders are a serious threat to public safety. When convicted sex offenders re-enter society, they are much more likely than any other type of offender to be re-arrested for a new sexual assault. Given the high rate of recidivism of sex offenders and that reducing opportunity and temptation is important to minimizing the risk of recidivism, there is a need to protect children where they congregate or play in public places in addition to the protections afforded by state law near schools, day-care centers and other places frequented by children. The Town finds and declares that in addition to schools and day-care centers, children congregate or play at public parks.

**2) Definitions**

As Used in this section and unless the context otherwise requires, the following terms shall have the meanings indicated:

**a) Crime Against Children**

Any of the offenses as set forth in § 301.45 (1d) (b), Wis. Stats., as amended from time to time, or the laws of this or any other state or federal government having like elements necessary for conviction.

**b) Offender**

An offender who has been convicted of or has been found delinquent of or has been found not guilty by reason of disease or mental defect of a sexual violent crime and/or a crime against children.

**c) Sexually Violent**

Shall have the meaning as set forth in § 980.01 (6), Wis. Stats., as amended from time to time.

**3) CHILD SAFETY ZONES**

**a)** No offender shall enter or be present upon any real property upon which there exists any facility used for or which supports a use of:

- i)** A public park, parkway, parkland, park facility;
- ii)** A public swimming pool;
- iii)** A public library;
- iv)** A public recreational trail;
- v)** A public playground;
- vi)** A school for children;
- vii)** A publicly owned athletic field used by children;
- viii)** A movie theatre;
- ix)** A day-care center;
- x)** A specialized school for children, including but not limited to a gymnastics academy, dance academy or music school;
- xi)** A public or private golf course or range;
- xii)** Aquatic facilities open to the public;
- xiii)** Any facility for children [which means a public or private school, a group home, as defined in § 48.02 (7), Wis. Stats., a residential care center for children and youth, as defined in § 48.02 (15d), Wis. Stat., a shelter care facility, as defined in § 48.02 (17), Wis. Stats., a foster home, as defined in § 48.02 (6), Wis. Stats., a treatment foster home, as defined in § 48.02 (17q), Wis. Stats., a day-care center licensed under § 48.65, Wis. Stats., a day-cared program established under § 120.13 (14), Wis. Stats., a day-care provider certified under § 48.651, Wis. Stats., or a youth center, defined in § 961.01 (22), Wis. Stats.]

**b)** A map depicting the locations of the real property supporting the above-enumerated uses, as amended from time to time, shall

be maintained in the office of the Town Clerk for public inspection.

**4) Exceptions to Child Safety Zones**

An offender does not commit a violation of section 3) a) above, and the enumerated uses may allow such offender on the property supporting such use, if any of the following apply:

- a) The property supporting an enumerated use under section 3) a) also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:
  - i) Entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
  - ii) Written advance notice is made from the offender to an individual in charge of the church and approval from an individual in charge of the church as attendance by the offender; and
  - iii) The offender shall not participate in any religious education programs which include individuals under the age of 18.
  
- b) The property supporting an enumerated use under section 3) a) also supports a use lawfully attended by an offender's natural or adopted child(ren), which child's use reasonably requires the attendance of the offender as the child's parent upon the property, subject to the following conditions:
  - i) Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and
  - ii) Written advance notice is made from the offender to an individual in charge of the use upon the property and approval an individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return, of the attendance by the offender.
  
- c) The property supporting an enumerated use under section 3) a) also supports a polling location in a local, state or federal election, subject to the following conditions;
  - i) The offender is eligible to vote;



this provision, the Board may consider the circumstances which resulted in offender status, including:

- i) Statutory provision(s) violated
- ii) Relationship of offender and victim
- iii) Presence of use of force
- iv) Presence of enticement
- v) Proximity in time between the offense and the request for exemption
- vi) Time out of incarceration
- vii) Credibility of offender
- viii) Remorse exhibited by the offender
- ix) Counseling and treatment history
- x) Support network of offender

b) The Board shall decide by majority vote whether to grant or deny an exemption. If granted, an exemption may be unconditional or restricted to a certain location or time. A written copy of the Board's decision shall be provided to the offender by certified mail or person delivery. A copy shall also be provided to his or her parole or probation officer, if any, and to the Town of Delavan Police Department. Any decision of the Board may be appealed to the Walworth County Circuit Court by certiorari within 30 days of the offender's receipt of the decision.

**6) Violations and Penalties**

If an offender violates section 3) a) above such offender shall be subject to the general penalty provision set forth under 25.01 1) of the Code. Each day a violation continues shall constitute a separate violation. In addition, the Town may undertake all other legal and equitable remedies to prevent or remove a violation of this section, including an action in the name of the Town in the Circuit Court of Walworth County to permanently enjoin such violation as a public nuisance.

*Established March 17, 2020, Ordinance No. 393*

**10.23 Exterior Lighting Regulated**

1) No person shall install, operate or maintain exterior lighting upon any property within the Town unless such exterior lighting complies with the requirements of

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Section 22.17 16) of the Municipal Code of the Town of Delavan.

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