

TITLE 11

Offenses and Nuisances

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Title 11 – Chapter 1

State Statutes Adopted

11-1-1	Offenses Against State Laws Subject to Forfeiture
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Sec. 11-1-1 Offenses Against State Laws Subject to Forfeiture.

The following statutes defining offenses against the peace and good order of the State are adopted by reference to define offenses against the peace and good order of the Town of Oshkosh. With the exception of §938.342, Wis. Stats., the penalty for commission of such offenses hereunder shall be limited to a forfeiture imposed under the general penalty provisions of this Code of Ordinances. Any future amendments, revisions or modifications of the Statutes incorporated herein by reference are intended to be made part of this Code. The penalty for truancy and high school dropouts shall be governed by the provisions of §938.342, Wis. Stats., as adopted herein.

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Sec. 11-1-2 Penalties; Attempt; Parties to Acts.

- (a) **Penalty.** In addition to the general penalty provisions of this Code in Section 1-1-6 or any other penalty imposed for violation of any Section of this Title, any person who shall cause physical damage to or destroy any public property shall be liable for the cost of replacing or repairing such damaged or destroyed property. The parent or parents of any unemancipated juvenile who violates Section 11-3-1 may also be held liable for the cost of replacing or repairing such damaged or destroyed property in accordance with the Wisconsin Statutes. Nothing in this Code of Ordinances shall prevent the Police Department from referring violations of the provisions of this Title to the District Attorney's office in the interest of justice.
- (b) **Attempt.**
 - (1) Whoever attempts to commit an act prohibited by Title 11 of the Code of Ordinances of the Town of Oshkosh may be required to forfeit amounts not to exceed one-half (1/2) the maximum penalty for the completed act.
 - (2) An attempt to commit an act prohibited by the ordinances in Title 11 requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute a violation of these ordinances and that he/she does acts towards the commission of the violation which demonstrate unequivocally, under all the circumstances, that he/she formed that intent and would commit the violation except for the intervention of another person or some other extraneous factor.
- (c) **Parties to Acts Prohibited in Title 11.**
 - (1) Whoever is concerned in the commission of an act prohibited by Title 11 of this Code of Ordinances, is a principle and may be charged with and convicted of the commission of said act although he/she did not directly commit it and although the person who directly committed it has not been convicted of some other act prohibited by these ordinances.
 - (2) A person is concerned in the commission of an act prohibited by these ordinances if he/she:
 - (a) Directly commits the act; or
 - (b) Intentionally aids and abets the commission of it; or
 - (c) Is a party to a conspiracy with another to commit it or advises, hires, counsels, or otherwise procures another to commit it. Such party is also concerned in the commission of any other act which is committed in pursuance of the intended violation and which, under

the circumstances, is the natural and probable consequence of the intended violation. This paragraph does not apply to a person who voluntarily changes his/her mind and no longer desires that the act be committed and notifies the other parties concerned of his/her withdrawal within a reasonable time before the commission of the violation so as to follow the others also to withdraw.

Title 11 – Chapter 2

Offenses Against Public Safety and Peace

11-2-1	Discharge of Firearms
11-2-2	Sale and Discharge of Fireworks Restricted
11-2-3	Obstructing Streets and Sidewalks Prohibited
11-2-4	Loitering Prohibited
11-2-5	Disorderly Conduct
11-2-6	Failure to Obey Lawful Order; Resisting an Officer
11-2-7	Possession of Controlled Substances; Marijuana
11-2-8	Loud and Unnecessary Noise Prohibited
11-2-9	Obscenity

Sec. 11-2-1 Discharge of Firearms.

Applicable state statutes shall be followed regarding the discharge of firearms in the Town of Oshkosh.

(a) **Exception.**

(1) Rifle use is prohibited during the deer gun season.

Sec. 11-2-2 Sale and Discharge of Fireworks Restricted.

No person shall sell, expose or offer for sale, use, keep, possess, discharge or explode any fireworks except toy pistol paper caps, sparklers and toy snakes within the limits of the Town unless he/she shall be authorized by a fireworks permit as provided in Title 7, Chapter 6, of this Code of Ordinances. The term “fireworks” as used in this Section shall be defined as provided in §167.10(1), Wis. Stats., and shall be deemed to include all fireworks, rockets or similar missiles containing explosive fuel.

State Law Reference: §167.10, Wis. Stats.

Sec. 11-2-3 Obstructing Streets and Sidewalks Prohibited.

- (a) **Obstructing Streets.** No person shall obstruct, loiter, cause a nuisance or engage in any sport or exercise on any public street, sidewalk, bridge or public ground within the Town of Oshkosh in such a manner as to:
- (1) Prevent or obstruct the free passage of pedestrian or vehicular traffic thereon;
 - (2) Prevent or hinder free ingress or egress to or from any place of business or amusement, church, public hall or meeting place; or

- (3) Cause a nuisance by congregating and hindering the free passage of pedestrian or vehicular traffic.
- (b) **Obstructing Sidewalk Prohibited.** No person shall block any sidewalk or bridge by obstructing the same so that it is impossible for a pedestrian to travel along the sidewalk without leaving the sidewalk and walking on adjacent property or on the street.
- (c) **Definitions.** As used in this Section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:
 - (1) **Loiter.** To sit, stand, loaf, lounge, wander or stroll in an aimless manner or to stop, pause or remain in an area for not obvious reason.
 - (2) **Nuisance.** Unnecessary conduct which may tend to annoy, intimidate, threaten or otherwise disturb another in or about any public street, sidewalk, bridge or public ground which is offensive to the public morals or decency of the citizens of the Town of Oshkosh.
 - (3) **Obstruct.** To interfere with unobstructed travel by any means, including but not limited to standing on the part of the walk that is fit for travel, or placing any object or vehicle whatsoever on such sidewalk.
 - (4) **Sidewalk.** Any sidewalk owned or maintained by the Town. The term shall not include sidewalks or walkways on private property in shopping centers, apartment complexes, office buildings sites or any other private property.
- (d) **Free Speech.** This Section shall not be interpreted as prohibiting any person from stopping on any sidewalk to talk or to make speech, provided that such person shall not stand in such a location that it is impossible for any pedestrian to travel along the sidewalk without leaving the sidewalk and walking on adjacent property or on the street. If two (2) or more persons are engaged in talking while stopped on a sidewalk, they shall not stand in such locations as to completely prevent any pedestrian from passing them on the sidewalk.

Sec. 11-2-4 Loitering Prohibited.

- (a) **Public Property Loitering Prohibited.**
 - (1) No person shall loiter in or about any public street, public sidewalk, street crossing, alley, bridge, public parking lot or other place of assembly or public use after being requested to move by any law enforcement officer.
 - (2) Upon being requested to move, a person shall immediately comply with such request by leaving the premises or area thereof at the time of the request.
 - (3) No person shall loiter in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious conduct of any unlawful act.
 - (4) No person shall loiter in or about any school or public place at or near which children or students attend or normally congregate. As used in this Subsection, "loiter" means to delay, to linger or to idle in or about any said school or public place without a lawful purpose for being present.

(b) **Private Property Loitering Prohibited.**

- (1) No person shall loiter in or about any private premises or adjacent doorways or entrances or upon private property held out for public use, including, but not limited to, business or industry parking lots or shopping malls without invitation from the owner or occupant or by any person in authority at such places. No person shall loiter in or about the doorway, stairway, steps or entrance of any business place of private residence without the expressed consent of the owner thereof, or at any time other than usual business hours. Under this Subsection, business place shall include public building at such times that the same shall be closed for the usual and normal business conduct thereat.
- (2) Upon being requested to move by any such person in authority or by any police officer, a person shall immediately comply with such request by leaving the premises or area thereof at the time of the request.
- (3) No person shall sit, lie, or otherwise recline upon or against any parked motor vehicle without the expressed consent of the owner thereof, whether such is parked upon a public street, alley, parking lot, driveway or private premises.
- (4) No person shall stand or loiter on any roadway other than in a safety zone if such act interferes with the lawful movement of traffic.

(c) **Loitering or Prowling Prohibited.**

- (1) No person shall loiter or prowl in a place, at a time or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person takes flight upon appearance of a police or peace officer, refuses to identify himself/herself or manifestly endeavors to conceal himself/herself or any object. Unless flight by the person or other circumstances makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this Section, afford the person an opportunity to dispel any alarm which would otherwise be warranted, by requesting him/her to identify himself/herself and explain his/her presence and conduct. No person shall be convicted of an offense under this Subsection if the law enforcement 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 law enforcement officer at the time, would have dispelled the alarm.
- (2) No person shall hide, wait or otherwise loiter in the vicinity of any private dwelling house, apartment building, or any other place of residence with the unlawful intent to watch, gaze or look upon the occupants therein in a clandestine manner.
- (3) No person shall lodge in any building, structure or place, whether public or private, without the permission of the owner or person entitled to possession or in control thereof.
- (4) No person shall loiter in or about a restaurant, tavern or other public building. As used in this Subsection, "loiter" means to, without just cause,

remain in a restaurant, tavern or public building or to remain upon the property immediately adjacent thereto after being asked to leave by the owner or person entitled to possession or in control thereof.

- (d) **Loitering by Underage Persons Where Alcohol Beverage is Dispensed.**
- (1) ***Underage Persons and Intoxicants.*** No underage person shall enter, remain or loiter in any public or private place where any fermented malt beverage or other alcohol beverage is sold, dispensed, given away or made available, unless accompanied by a parent, guardian or spouse who has attained the legal drinking age.
 - (2) ***Permitting Loitering Prohibited.*** No person of legal drinking age shall permit any underage person to enter, remain or loiter in any premises, public or private, where fermented malt beverages or other alcohol beverages are served, sold, dispensed, given away or made available, unless such underage person is accompanied by a parent, guardian or spouse who has attained the legal drinking age.
- (e) **Definitions.** As used in this Section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:
- (1) ***Loiter.*** To sit, stand, loaf, lounge, wander or stroll in an aimless manner or to stop, pause or remain in an area for no obvious reason.
 - (2) ***Nuisance.*** Unnecessary conduct which may tend to annoy, intimidate, threaten or otherwise disturb another in or about any public street, sidewalk, bridge or public ground which is offensive to the public morals or decency of the citizens of the Town of Oshkosh.
- (f) **Soliciting.** No person shall loiter in or near any thoroughfare or place open to the public in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting or procuring another to commit an act of prostitution. Among the circumstances which may be considered in determining whether such purpose is manifested: that such person is a known prostitute or panderer, that such person repeatedly beckons to stop or attempts to stop, or engages male or female passersby in conversation, or repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms or any other bodily gesture. The violator's conduct must be such as to demonstrate a specific intent to induce, entice, solicit or produce another to commit an act of prostitution. No arrest shall be made for a violation of this Subsection unless the law enforcement officer first affords such persons an opportunity to explain such conduct, and no one shall be convicted of violating this Subsection if it appears at trial that the explanation given was true and disclosed a lawful purpose. As used in this Subsection
- (1) ***Public Place*** is an area generally visible to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those which serve food or drink or provide entertainment, and the doorway and entrance to buildings or dwellings and the grounds enclosing them.
 - (2) ***Known Prostitute or Panderer*** means a person who, within five (5) years previous to the date of arrest for violation of this Section, had, within the

knowledge of the sworn police officer, been convicted in any municipal court or circuit court in the State of Wisconsin of an offense involving prostitution.

Sec. 11-2-5 Disorderly Conduct.

- (a) **Disorderly Conduct Prohibited.** No person within the Town of Oshkosh shall:
 - (1) In any public or private place engage in violent, noisy, riotous, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to cause or provoke an immediate disturbance of public order or tends to annoy or disturb any other person;
 - (2) Intentionally cause, provoke or engage in any fight, brawl, riot or noisy altercation;
 - (3) With intent to annoy another, make a telephone call, whether or not conversation ensues;
 - (4) Indecently expose his or her person;
 - (5) Be in any business or private structure, private vehicle or upon any private grounds without the consent of the owner.
- (b) **Defecating or Urinating in Public Places.** It shall be unlawful for any person to defecate or urinate outside of designed sanitary facilities, upon any sidewalk, street, alley, public parking lot, park, playground, cemetery or other public area within the Town, or upon any private property in open view of the public, or in the halls, rooms without restroom facilities, stairways or elevators of public or commercial buildings, or to indecently expose his person.

Sec. 11-2-6 Failure to Obey Lawful Order; Resisting an Officer.

- (a) **Lawful Orders.** It shall be unlawful for any person to fail to obey the direction or order of a police officer while such police officer is acting in an official capacity in carrying out his or her duties.
- (b) **Resisting or Interfering with Officer Prohibited.** It shall be unlawful for any person to resist or in any way interfere with any law enforcement officer or any person called to assist such officer, or to threaten, resist or interfere with such officer or person or to advise or encourage any other person to resist or interfere with such officer or person in the discharge of his/her duty, or to in any way interfere with or hinder or prevent him/her from discharging his/her duty as such officer or assistant, or to offer or endeavor to do so, or to in any manner assist any person in the custody of any law enforcement officer to escape or to attempt to escape from such custody, or to try to persuade any person to escape from the custody of such officer, or to rescue or attempt to rescue any person so in custody or to fail to obey the order or direction of such officer while such officer is acting in his/her official capacity in carrying out his/her duties.

Sec. 11-2-7 Obstructing Emergency or Rescue Personnel.

- (a) **Definitions.** For the purposes of this Section, the following definitions apply to the terms as used herein:
- (1) **Ambulance.** An emergency vehicle, including motor vehicle, boat or aircraft, whether privately or publicly owned, which is designated, constructed or equipped to transport patients.
 - (2) **Ambulance Service Provided.** A person engaged in the business of transporting sick, disabled or injured persons by ambulance to or from facilities or institutions providing health services.
 - (3) **Ambulance Attendant.** A person who is responsible for the administration of emergency care procedures, proper handling and transporting of the sick, disabled or injured persons, including but not limited to, ambulance attendants and ambulance drivers.
 - (4) **Person.** Any individual, firm, partnership, association, corporation, trust, foundation, company, any governmental agency other than the U.S. government, or any group of individuals, however named, concerned with the operation of an ambulance.
 - (5) **Authorized Emergency Vehicle** means any of the following:
 - (a) Police vehicles, whether publicly or privately owned;
 - (b) Conservation wardens' vehicles or foresters' trucks, whether publicly or privately owned;
 - (c) Vehicles of a fire department or fire patrol;
 - (d) Privately owned motor vehicles being used by deputy state fire marshals or by personnel of a full-time or part-time fire department or by members of a volunteer fire department while en route to a fire or on an emergency call pursuant to orders of their chief or other commanding officer;
 - (e) Such emergency vehicles of municipal or county departments or public service corporations as are designated or authorized by the local authorities to be authorized emergency vehicles.
 - (f) Such emergency vehicles of state departments as are designated or authorized by the heads of such departments to be authorized emergency vehicles;
 - (g) Such ambulances, publicly owned, as are designated or authorized by local authorities to be authorized emergency vehicles;
 - (h) Such ambulances which are privately owned and are operated by owners or their agents and which vehicles are authorized by the sheriff or others designated by the county board to be operated as emergency vehicles. The sheriff or others designated by the county board may make such authorization which shall be in writing and which shall be effective throughout the state until rescinded. The sheriff or others designated by the county board may designate any owner of ambulances usually kept in the county to operate such vehicles as authorized emergency vehicles. Such written authorization shall at all times be carried on each ambulance used for emergency purposes. The sheriff shall keep a file of such authorizations in his office for public inspection, and all other

- persons permitted to issue authorizations shall file a copy of all authorizations issued with the sheriff who shall keep them on file;
- (6) **Emergency Medical Personnel.** Any emergency medical personnel, ambulance attendant, peace officer or fire fighter, or other person operating or staffing an ambulance or an authorized emergency vehicle.
 - (7) **Bonafide Emergency or Bonafide Request for Emergency Services.** Those circumstances wherein the caller reasonably believes that person(s) and or property may be in actual or potential danger of injury, and in the case of person(s), in danger of illness.
- (b) **Prohibitions.** It is the intent of the Town of Oshkosh, in its adoption of this provision, to protect against the foregoing activities in a manner consistent with that provided by §941.37, Wis. Stats. The following acts are prohibited and perpetration thereof subjects the violator to penalty as provided by Section 1-1-6:
- (1) Knowingly obstructing any emergency medical personnel in the performance of duties relating to an emergency or rescue;
 - (2) Intentionally interfering with any medical personnel in the performance of duties relating to an emergency or rescue, when it is reasonable that the interference may endanger another's safety;
 - (3) Knowingly making any telephone call to any emergency medical personnel, police agency or fire department for any purpose other than to report a bona fide emergency or to make a bona fide request for emergency services.

Sec. 11-2-8 Loud and Unnecessary Noise Prohibited.

- (a) **Loud and Unnecessary Noise Prohibited.** It shall be unlawful for any person to make, continue or cause to be made or continued any loud and unnecessary noise. Any unreasonably loud, disturbing and unnecessary noise or any noise of such character, intensity or duration as to be detrimental to the life, or health of any individual for which is in the disturbance of public peace and welfare is hereby prohibited.
- (b) **Definitions.** As used in this Section:
- (1) **Ambient Noise.** The all-encompassing background noise associated with a given environment, being usually a composite of sounds from many sources near and far.
 - (2) **Agricultural District.** Any area of the Town of Oshkosh designated on the official Town of Oshkosh Zoning Map, pursuant to the Winnebago County Zoning Ordinance, as an agricultural district.
 - (3) **A Weighted Sound Level.** The sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated db (A) or dBA.
 - (4) **Commercial District.** Any area of the Town of Oshkosh designated on the official Town of Oshkosh Zoning Map, pursuant to the Winnebago County Zoning Ordinance, as a Commercial District.
 - (5) **Day.** The hours between 7:00 a.m. and 10:00 p.m.
 - (6) **Decibel (dB).** A standard unit of sound-pressure level.

- (7) **Impulsive Sound.** A sound of short duration, usually less than one (1) second, with an abrupt onset and rapid decay. Intervals between impacts must be longer than 0.5 seconds.
- (8) **Industrial District.** Any area of the Town of Oshkosh designated on the official Town of Oshkosh Zoning Map, pursuant to the Winnebago County Zoning Ordinance, as a Light Industrial, Industrial, or Heavy Industrial District.
- (9) **Night.** The hours between 10:00 p.m. and 7:00 a.m.
- (10) **Park and Recreational District.** Any area of the Town of Oshkosh designated on the official Town of Oshkosh Zoning Map pursuant to the Winnebago County Zoning Ordinance, as a park or recreational district.
- (11) **Person.** Any individual, firm or corporation.
- (12) **Pure Tone.** A sound having single pitch. For the purpose of this Section, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third octave bands by fifteen (15) dB bands with center frequencies less than one hundred sixty (160) Hz; by eight (8) dB for bands with center frequencies of one hundred sixty (160) Hz to four hundred (400) Hz; and by five (5) dB for bands with center frequencies greater than four hundred (400) Hz.
- (13) **Real Property Boundary.** An imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one (1) person from that owned by another person, but not including intra-building real property division.
- (14) **Residential District.** Any area of the Town of Oshkosh designated on the official Town of Oshkosh Zoning Map, pursuant to the Winnebago County Zoning Ordinance, a Single-Family, Two-Family, or Multiple Dwelling Districts.
- (15) **Sound Level.** The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A or octave band, as specified in American National Standards Institute specifications for sound level meters (ANSI S 1.4 – 1971. or the latest approved revision thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.
- (16) **Sound Level Meter.** An instrument which includes a microphone, amplifier, RMS detector, integrator or time average, output meter, and weighting networks used to measure sound pressure levels.
- (17) **Sound Pressure.** The instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.
- (18) **Sound Pressure Level.** Twenty (20) times the logarithm to the base ten (10) of the ratio of the RMS sound pressure to the reference pressure of twenty (20) micropascals (20×10^{-6} N/m²). The sound pressure level is denoted Lp or SPL and is expressed in decibels.
- (19) **Octave Band Sound Pressure Level.** The sound pressure level measured by a sound level meter utilizing an octave bank filter which

meets the specifications given in American National Standards Institute (ANSI) publication S1.11 – 1966 (R1976).

(c) **Noise Limitations.**

(1) Noise Limitations in Various Use Districts.

Octave Bank Center Frequency (Hertz)	<u>Maximum Sound Pressure Levels (dB) Along District Boundaries</u>	
	Residential	Commercial
31.5	72	79
63	71	78
125	65	72
250	57	64
500	51	58
1000	45	52
2000	39	46
4000	34	41
8000	32	39
A-scale Levels	55 dBA	62 dBA

- (2) In industrial districts, at no point where any such district boundary adjoins a residential, commercial, agricultural, or park and recreational district, or at one hundred twenty-five (125) feet from the nearest lot line of a plant or operation located within an industrial district, whichever distance is greater, shall the sound pressure level emitted from any such plant or operation, or the combined operations of any person, firm, or corporation, exceed the sound level limitations (decibel levels) in the designated octave bands set forth above for the various use districts.
- (3) In agricultural, park and recreational, commercial and residential districts, any property use shall conform with the performance standards stated above, provided that performance standards shall in every case be applied at or beyond the boundaries of the lot on which such use is established.
- (4) When an octave band analysis is not done, an A-weighted sound level measurement of the noise shall be taken. When this method is used, the sound level limitations shall be the A-scale levels included in the table.
- (5) Maximum sound pressure levels shall be decreased by five (5) dB if the subject noise consists primarily of a pure tone or if it is impulsive in character. When the total sound pressure level exceeds the noise source limitations because of high ambient sound levels, the following correction factors shall be subtracted from the total sound pressure level to determine compliance with this Section:

**When the ambient level differs from
the noise source limitation by:**

**The correction factor
to be subtracted is:**

-10 dB or more	0
-4 to -9 dB	1
-2 to -3 dB	2
0 to -1 dB	3
+1 dB	4

- (6) When the ambient level is two (2) dB or more above a sound level limitation, a source may add no more than two (2) dB to the ambient level.
- (d) **Noise Measurement Methods.** Noise measurements shall be made in compliance with generally accepted practices and procedures. The (Town Chairman) shall prepare and make available upon request, a “Code of Recommended Practices” for the measurement of noise.
- (e) **Public Nuisance.** Excessive noise as defined in this Section, is hereby deemed and declared to be a public nuisance and may be subject to summary abatement procedures. Such abatement shall be in addition to administrative proceedings, forfeitures and penalties provided in this Section.
- (f) **Prohibited Acts.** No person shall make, produce, allow or cause to be produced any noise which exceeds the noise limitations as set forth in this Section.
- (g) **Noise Exemptions.** The noise limitations as set forth in Subsection (c)(1) shall not apply to the following:
- (1) Non-commercial public speaking and public assembly activities conducted on any public property.
 - (2) Construction sites, public utilities, and public works projects and operations during any day, from Monday through Saturday, inclusive; provided, however, that the sound level at or across a real property boundary shall not exceed eighty-six (86) dBA without prior written approval from the Town Chairperson.
 - (3) Emergency short term operations which are necessary to protect the public health, safety and welfare of the citizens, including emergency utility and public works operations.
 - (4) Any noise emitted from emergency warning devices and unregulated safety relief valves.
 - (5) Loading or unloading operations or other handling of boxes, crates, containers, building materials, garbage cans, or similar objects during any day.
 - (6) Stationary bells, chimes, sirens, whistles or similar devices, intended primarily for emergency purposes, except industrial whistles; provided, however, that no such device shall be sounded more than five (5) minutes in any hourly period, nor a total of thirty (30) minutes in any twenty-four (24) hour period. Church bells, chimes and carillons may be rung at any time.

- (7) Domestic power tools, including any mechanically powered saw, drill, sander, lawn or garden tool, snow blower, or similar device used during any day.
 - (8) Industrial whistles, provided that the sounding of any such whistle is to give notice of the time to begin or stop work or as a warning of fire, danger, or upon request of proper city authorities.
 - (9) The sounding of any horn on a railroad train or locomotive on a main line railroad track, provided that any such sounding is required by state law or reasonably required to avoid an impending accident.
 - (10) Agricultural equipment used in farming operations.
 - (11) Noise created by human behavior and generally considered to be disorderly conduct.
 - (12) Barking dogs, including kennels.
- (h) **Places of Public Entertainment.** No person shall operate, play or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device or any combination thereof, which produces, reproduces, or amplifies sound in any place of public entertainment at a sound level greater than one hundred (100) dBA as read by the slow response on a sound level meter at any point that is normally occupied by a customer, unless a conspicuous and legible sign which is at least two hundred twenty-five (225) square inches in an area is placed outside such place, near each public entrance, stating: "Warning: Sound levels within may cause permanent hearing impairment."
- (i) **Motor Vehicles.** It shall be unlawful for any person to cause noise levels from the operation of a light motor vehicle in excess of eight (80) dBA at any location within the limits of the Town of Oshkosh. Measurement may be made at any distance greater than or equal to fifteen (15) feet from the closest approach to the vehicle at any suitable site in accordance with procedures outlined in the code of recommended practices on file with the Town Clerk.

Maximum Noise Limits at 15 Feet From Vehicle in Use

	Speed Limit of 35 mph or less	Speed Limit of more than 35 mph
1. Any motorcycle	82dBA	86 dBA
2. Any other motor vehicle, including passenger automobiles, or any combination of vehicles towed by such motor vehicles, with a manufacturer's gross vehicle weight rating of less than 10,000 pounds	80 dBA	83 dBA

- (j) **Variance Permits.** A variance permit for time to comply with the noise or vibration limitations as set forth in this Section may be requested for any commercial or industrial source of noise or vibration in excess of any such limitations.
- (1) **Application.** Application for a variance permit under this Section by the commercial or industrial activity concerned shall be made in writing to the Town Chairperson on a form prescribed by him. Such application shall specify the grounds upon which the variance is sought shall be brought into compliance with this Section. An application for a variance permit shall be considered timely made if filed within thirty (30) days following due notification to a commercial or industrial activity within thirty (30) days following due notification to a commercial or industrial activity that it is in violation of this Section. The proper filing of an application within such time shall toll all penalties provided in this Section for any such violation until a final decision has been issued on the merits of such application. The Town Chairperson within ten (10) days of the receipt of an application for a variance permit, shall give public notice thereof.
- (2) **Permit.** Within a reasonable time following receipt of an application for a variance permit and after public notice thereof has been given, the Town Chairperson shall grant such permit to an applicant if he or she shall find that immediate compliance with the noise or vibration limitations as set forth in this Section would result in unnecessary hardship to the applicant. In making his or her determination, the Town Chairperson shall balance the hardship to the applicant, the community, and other persons of not granting the variance, against the adverse impact on health, safety, and welfare of persons affected, the adverse effect on property affected, and any other adverse impacts of granting the variance. Any person who claims to be adversely affected by the allowance of the variance permit may file a statement with the Town Chairperson containing information to support his or her claim. The Town Chairperson may require the applicant to submit information not contained in the application which may be necessary for making a determination under this Section. Within five (5) days following his or her determination, the Town Chairperson shall mail to all interested parties and place on file with the Town Clerk a copy of his or her decision which shall specify the reasons for denying or granting the variance permit.
- (3) **Conditions.** The Town Chairperson may grant a variance permit under such conditions as he or she may find are necessary to protect the public health, safety, and welfare, including a schedule for achieving compliance with noise and vibration limitations. Variances exceeding two (2) years may be granted only in exceptional cases, including those for which, in the opinion of the Town Chairperson, control technology is unavailable or available only at a prohibitive cost. Non-compliance with any conditions imposed on the variance shall terminate the variance and subject the

person holding it to those provisions of this Section for which the variance permit was granted.

- (4) **Extension and Modification.** Application for extension of time limits or modification of other conditions specified in the variance permit shall be treated like applications for an initial variance, except that the Town Chairperson must find that the need for such extension or modification clearly outweighs any adverse impacts of granting the extension or modification.
- (5) **Appeals.**
 - (a) Within thirty (30) days after any decision of the Town Chairperson on a permit application, any person aggrieved thereby may appeal from any such decision to the Town Board. Appeals shall be taken by filing with the Town Chairperson a notice of appeal specifying the grounds therefor. On appeal the Town Chairperson shall forthwith transmit all papers relating to such appeal to the Town Clerk. The Clerk shall place the appeal before the Town Board at its next meeting. The Town Board shall fix a reasonable time for hearing of same and give public notice thereof, as well as due notice to the parties interested, and shall promptly decide the appeal.
 - (b) Any party to an appeal as well as any person who claims to be adversely affected by allowance of the variance permit may appear at the hearing of such appeal in person and may produce witnesses and be represented by counsel. In addition, the Town Board may examine such other persons as it may deem necessary for a fair and impartial hearing of the appeal. The Clerk shall swear all persons testifying before the Town Board in regard to the appeal, and shall maintain a record of all testimony and other evidence as may be presented.
 - (c) From the evidence before it, the Town Board, in conformity with the provisions of this Section, may reverse, affirm or modify the decision of the Town Chairperson appealed from, and to this end, may direct the issuance of a permit.
 - (d) Within five (5) days after any decision on an appeal, the Clerk shall cause due notice thereof in writing to be mailed to all parties to the appeal as well as any other persons who may have appeared therein at their first known post office address. Such notice shall specify the ground of the decision.
- (6) **Legal Recourse.** Any applicant aggrieved by the decision of the Town Board or any person so aggrieved may seek such other legal relief as may be available.

Sec. 11-2-9 Obscenity.

- (a) **Distribution of Obscene Material Prohibited.** It shall be unlawful for any person to send or cause to be sent, bring or cause to be brought into the Town of

Oshkosh, for sale or distribution, or for any person in the Town of Oshkosh to prepare, publish, print, exhibit, distribute or offer to distribute, or to have in his possession with intent to distribute or to exhibit or offer to distribute, any material that such person knows to be “obscene” as hereinafter defined.

(b) **Definitions.**

- (1) The word “obscene” shall apply to any work or material that depicts or describes acts of: sexual intercourse between humans, normal or perverted, actual or simulated; acts of masturbation; fellatio; cunnilingus; acts of a sexually stimulated condition; and sexual relations between humans and animals, any of which taken as a whole by the average person applying contemporary community standards would be found to:
 - (a) Appeal to the prurient interest in sex; and
 - (b) Portray sexual conduct in a patently offensive way; and which, taken as a whole by the average person applying contemporary national standards, would be found not to have serious literary, artistic, political or scientific value.
- (2) The word “material” or “work” shall mean any book, magazine, newspaper, or other printed or written material, or any picture, drawing, photograph, motion picture, video tape, or other pictorial representation.
- (3) The word “person” shall mean any individual, partnership, firm, association, corporation or other legal entity.
- (4) The word “distribute” shall mean any transfer or possession with intent to transfer, whether with or without consideration.
- (5) The word “know” shall mean being aware, or having reason to be aware, of the nature of the materials alleged to be obscene.

Title 11 – Chapter 3

Offenses Against Property

11-3-1	Destruction of Property Prohibited
11-3-2	Littering Prohibited
11-3-3	Abandoned Refrigerators Prohibited
11-3-4	Damage to Public Property
11-3-5	Trespass to A Dwelling or Land
11-3-6	Regulation of Smoking
11-3-7	Graffiti
11-3-8	Cemetery Regulations

Sec. 11-3-1 **Destruction of Property Prohibited.**

- (a) **Destruction of Property.** No person shall willfully injure or intentionally deface, destroy, or unlawfully remove or interfere with any property belonging to the Town of Oshkosh, government, School District, business or to any private person without the consent of the owner or proper authority, nor shall any person or organization place or permit be placed any sign, poster, advertisement, notice, or other writing upon any utility ornamental light pole belonging to the Town without the consent of proper authority. Any signs, posters, advertisements, notices, or other writings so placed shall be removed by law enforcement authorities and the placing person or organization cited for violation of this Section.
- (b) **Parental Liability.** Pursuant to §895.035, Wis. Stats., the parents of an unemancipated minor shall be liable for the damage of property caused by the willful, malicious or wanton act of such child; such liability shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00).
- (c) **Penalty Provisions.**
- (1) Any person seventeen (17) years of age or over who violates this Section is subject to a penalty as provided in Section 1-1-6, restitution to the injured party, and the costs of prosecution.
- (2) Any person twelve (12) years of age through sixteen (16) years of age shall be subject to a forfeiture not to exceed Twenty-five Dollars (\$25.00) and any other applicable penalty provided by §938.344, Wis. Stats., as that Section may exist, be amended or changed.
- (d) **Victim Remedies.** Any person or entity injured by a violation of this Section by a minor child shall be advised of the rights and remedies available under §895.035, Wis. Stats.

Sec. 11-3-2 Littering Prohibited.

- (a) **Littering Prohibited.** No person shall throw any glass, refuse or waste, filth or other litter upon the streets, alleys, highways, public parks or other property of the Town of Oshkosh, or upon property within the Town owned by the School District or any private person, or upon the surface of any body of water within the Town.
- (b) **Litter From Conduct of Commercial Enterprise.**
 - (1) **Scope.** The provisions of this Subsection shall apply to all sales, promotions and other commercial ventures that result in litter being deposited on any street, alley or other public way.
 - (2) **Litter to be cleaned up.** Any person, firm, corporation or association carrying on an enterprise that results in litter being deposited on any street, alley or other public way shall clean up the same within twelve (12) hours of the time the same is deposited. If any such litter is subject to being blown about, it shall be picked up immediately. If any such litter is likely to attract animals or vermin, such litter shall be picked up immediately.
 - (3) **Litter picked up at litterer's expense.** If any person, firm, corporation or association fails to pick up any litter as required by Subsection (b)(1) within the time specified, the Town shall arrange to have the same picked up by the Town crews or by private enterprise. The entire expense of picking up such litter, together with an additional charge of twenty percent (20%) for administrative expenses, shall be charged to the person, firm, corporation or association that did the littering. If such sum is not promptly paid, steps shall be taken, with the advice of the Town Attorney's office, to collect the same. This charge shall be in addition to any forfeiture or other penalty for violation of this Section.
- (c) **Depositing of Materials Prohibited.** It shall be unlawful for any person to deposit, cause or permit to be deposited, placed or parked any vegetation, grass, leaves, foliage, earth, sand, gravel, water, snow, ice, debris, waste material, foreign substance, construction materials, equipment or object upon any street, sidewalk or public property without authorization of the Town Board or designee to the provisions of this Code of Ordinances, or upon any private property without the consent of the owner or lessee of the property. Any person who deposits, causes or permits to be deposited, placed or parked any such materials, equipment or objects upon any street, sidewalk or property shall be responsible to properly mark or barricade the area so as to prevent a safety hazard.
- (d) **Handbills.**
 - (1) **Scattering Prohibited.** It shall be unlawful to deliver any handbills or advertising material to any premises in the Town except by being handed to the recipient, placed on the porch, stoop or entrance way of the building or firmly affixed to a building so as to prevent any such articles from being blown about, becoming scattered or in any way causing litter.
 - (2) **Papers in Public Places Prohibited.** It shall be unlawful to leave any handbills, advertising material or newspapers unattended in any street,

alley, public building or other public place, provided that this shall not prohibit the sale of newspapers in vending machines.

Sec. 11-3-3 Abandoned Refrigerators Prohibited.

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

Sec. 11-3-4 Damage to Public Property.

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

Sec. 11-3-5 Trespass to a Dwelling or Land.

- (a) **Purpose.** This Section is created for the purposes of securing to the residents of the Town of Oshkosh their rights to enjoyment and use of land and property by providing an efficient and orderly method of enforcement of such rights. This ordinance is enacted under the authority of sections of the Wisconsin Statutes and acts amendatory thereto.
- (b) **Short Title.** This Section may be referred to and cited as the Town of Oshkosh Trespass Ordinance.
- (c) **Violations.** It shall be unlawful and a violation of this Section for any person to commit any of the following acts:
 - (1) Enter upon any enclosed or cultivated land of another with intent to catch or kill any birds, animals, or fish on such land or gather any products of the soil without the express or implied consent of the owner or occupant to engage in any such activities.

- (2) To enter or remain on any land of another after having been notified by the owner or occupant not to enter or remain on such premises.
 - (3) To hunt, shoot, fish, or gather any product of the soil on the premises of another, or enter said premises with intent to do any of the foregoing after having been notified by the owner or occupant not to do so.
 - (4) To enter upon any enclosed or cultivated land or another with a vehicle of any kind without the express or implied consent of the owner or occupant.
 - (5) To erect upon the land of another any sign which is the same as or similar to the type of sign described in Subsection (d), unless authorized to do so by the owner of the lands involved.
- (d) **Posting of Lands.** For lands to be posted against entry by another under this Section, a sign at least eleven (11) inches square must be placed in at least two (2) conspicuous places for every forty (40) acres sought to be protected. The sign must carry an appropriate notice and the name of the person giving the notice followed by the word “owner” if the person giving the notice is the holder of legal title to the land and by the word “occupant” if the person giving the notice is not the holder of legal title but is a lawful occupant of the land. Proof that appropriate signs as herein provided were erected or in existence upon the premises to be protected within six (6) months prior to the event complained of shall be prima facie proof that the premises to be protected were posted as herein provided.
- (e) **How Entry Denied.** A person has received notice from the owner or occupant within the meaning of this Section if he/she has been notified personally, either orally or in writing, or if the land is posted.
- (f) **Failure to Post.** The failure of any person or occupant to post his or her lands shall not be deemed to constitute consent of such owner or occupant to any uninvited entry by another. Any entry by a person other than the lawful owner or lawful occupant of land or building shall constitute a violation of this ordinance if such entry is made under circumstances tending to create or provoke breach of the peace.

Sec. 11-3-6 Regulation of Smoking.

- (a) **State Statute Adopted.** The provisions of Chapter 101.123, Wis. Stats., relating to the Regulation of Smoking and Clean Indoor Air, except provisions therein relating to penalties to be imposed, are hereby adopted by reference and made a part of this Section as is fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this Section. Any future amendment, revisions or modifications of the statutes incorporated herein are intended to be made a part of this Section.
- (b) **Smoking Prohibited Within or Upon All Buildings and Equipment Owned, Leased or Rented by the Town.** In recognition of a need to protect the health and comfort of the public and Town employees from the detrimental effects of smoking, pursuant to the authority granted to the Town by §101.123(2)(c), Wis. Stats., smoking as defined by §101.123(1)(h), Wis. Stats., is hereby prohibited by any person within or upon all buildings and enclosed equipment owned, leased

or rented by the Town of Oshkosh, except in designated areas. Specifically, it shall be unlawful for any person to use any tobacco product or material that can be smoked in the Town of Oshkosh Town Hall.

- (c) **State Statutes Adopted.** The provisions contained in §120.12(20), Wis. Stats., regulating smoking on school premises are adopted by reference and made a part of this Section as though fully set forth in full.

Sec. 11-3-7 Graffiti.

- (a) **Definition.** “Graffiti” is any drawing, figure, inscription, symbol, or other marking which is scratched, painted, drawn in pen or marker, or placed by some other permanent or semi-permanent means upon sidewalks, streets, public or private structures or any other place in public view without the express permission or consent of the property owner.
- (b) **Public Nuisance.** Graffiti is hereby declared to be a public nuisance, as defined under Title 11, Chapter 6 of this Code, affecting peace and safety.
- (c) **Prohibitions.** No person shall write, spray, scratch or otherwise affix graffiti upon any property whether private or public without the consent of the owner or owners of said property. Any person who shall affix graffiti to any property without the consent of the owner shall be liable for the costs of removing or covering such graffiti in addition to any fines imposed for violating this Section. The parents of any unemancipated minor child who affixed graffiti shall be held liable for the cost of removing or covering said graffiti in accordance with §895.035, Wis. Stats.
- (d) **Removal By Property Owner.**
 - (1) Every owner of a structure or property defaced by graffiti shall cover or remove the graffiti within fifteen (15) days in compliance with written notice served upon them by the Town to remove or cover such graffiti.
 - (2) In the event any owner fails to comply with the above-mentioned notice, the Town may have the graffiti covered or removed, and in such event, all costs, fees and expenses will be assessed to said owners real estate taxes pursuant to §66.60(16), Wis. Stats.

Sec. 11-3-8 Cemetery Regulations.

- (a) **Purpose and Definition.** In order to protect cemetery areas within the Town from injury, damage or desecration, these regulations are enacted. The term “cemetery” as hereinafter used in this Section shall include all cemetery property, grounds, equipment and structures, both privately and publicly owned, which are located within the Town of Oshkosh.
- (b) **Authority to Establish Rules and Regulations.** The cemetery property owner shall have the authority to establish reasonable rules and regulations to regulate and govern the operation of any cemetery in accordance with state law and this Code of Ordinances. The cemetery property owner shall reserve the right to prohibit and regulate the planting or placement of any flowers, plants, vines, shrubs, trees, flower pots, urns or other objects on cemetery property.

Placements of any such plantings, containers or objects shall be in accordance with established regulations of the cemetery property owner.

(c) **Specific Regulations.**

- (1) ***Disturbing Cemetery Property.*** No person shall cut, remove, damage or carry away any flowers, plants, vines, shrubs or trees from any cemetery lot or property except the owner of the cemetery lot or a person with the cemetery lots owner's consent or any cemetery employee or representative engaged in official cemetery duties for the cemetery owner; nor shall any person without proper authority remove, deface, mark or damage in any manner any cemetery markers, headstones, monuments, fences or structures; nor shall any person without proper authority remove, damage or destroy any vases, flower pots, urns or other objects which have been placed on any cemetery lot; nor shall any person move or remove any cemetery equipment without the owner's consent.
- (2) ***Protection of Cemetery Property.*** No person shall trap in any cemetery without specific written authorization of the owner; nor shall any person kill, injure or disturb or attempt to injure or disturb, any animals, birds or waterfowl, wild or domestic within any cemetery in any matter except as provided by this Code of Ordinances; nor shall any person climb any tree, break, cut down, trample upon, remove or in any manner injure, deface, write upon or in any manner damage any tree, shrub, flower, flower bed, turf, grassy area, soil, building, structure, equipment, official notice, sign or other property within any cemetery. No picnic, parties, or similar gatherings are permitted.
- (3) ***Motor Vehicles.*** Motor vehicles are restricted to the roads and drives and parking areas. Except for authorized maintenance vehicles, no person shall operate an unlicensed or licensed motorized vehicle on any cemetery property outside of areas specifically designated as parking areas or areas where the operation of such vehicles is specifically permitted. It shall be unlawful for a person to engage in any off-roadway operation of a motorized vehicle on cemetery property without the owner's consent.
- (4) ***Speed Limit.*** No person shall operate any motorized vehicle in any cemetery in excess of fifteen (15) miles per hour unless otherwise posted.
- (5) ***Parking.*** No person, without the owner's consent, shall park any motor vehicle in any cemetery on any grassy or seeded area or upon any location except a designated parking area; nor shall any person park a motor vehicle on cemetery property for any purpose except engaging in official cemetery business. Any unlawfully parked motor vehicle may be towed or removed by the cemetery property owner at the vehicle owner's expense.
- (6) ***Littering Prohibited.*** No person shall litter, dump or deposit any rubbish, refuse, earth or other material in any cemetery without the owner's consent.

- (7) **Pets.** Pets, including animals of any species, and horses are prohibited in any cemetery **unless** the Cemetery Sexton gives consent. The exception is a certified service animal.
- (8) **Sound Devices.** No person shall operate or play any amplifying system or sound device in any cemetery without the owner's consent.
- (9) **Authorized Notices.** No person shall post, paste, fasten, paint or attach any placard, bill, notice, sign or advertising matter upon any structure, tree or other natural object in any cemetery, except cemetery regulations and other signs authorized by the owner. No person shall remove, deface or damage in any manner any official sign or notice posted in any cemetery.
- (10) **Loitering Prohibited.** No person shall loiter or cause a nuisance or engage in any sport or exercise on any cemetery property without the owner's consent.
- (11) **Alcoholic Beverages Prohibited.** No person shall consume or have in his/her possession any open container containing an alcohol beverage upon any cemetery property within the Town unless the property is specifically named as being part of a licensed premises.
- (12) **Play Vehicles Prohibited.** No person shall operate or make use of a play vehicle upon any cemetery property without the owner's consent. As used in this Section, a play vehicle shall mean any coaster, skateboard, roller skates, sled, toboggan, unicycle or toy vehicle upon which a person may ride.
- (13) **Presence After Hours Prohibited.** No person shall be present upon any cemetery property without the owner's consent during posted hours when the cemetery is not open to the public.

Cross References:

Sec. 7-11 Plummer Cemetery-Purchase of Cemetery Lot(s) and Transfers

Sec. 7-11 Exhibit A Plummer Cemetery Fees and Rules

Title 11 – Chapter 4

Offenses Involving Alcoholic Beverages

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

Sec. 11-4-1 Sale to Underage or Intoxicated Persons Restricted.

(a) **Sales of Alcohol Beverages to Underage Persons.**

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

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

- (1) Required to forfeit not more than Five Hundred Dollars (\$500.00) if the person has not committed a previous violation within thirty (30) months of the violation; or
- (2) Fined not more than Five Hundred Dollars (\$500.00) if the person has committed a previous violation within thirty (30) months of the violation.

- (3) Fined not more than One Thousand Dollars (\$1,000.00) if the person has committed two (2) previous violations within thirty (30) months of the violation.
- (4) Fined not more than Ten Thousand Dollars (\$10,000.00) if the person has committed three (3) or more previous violations within thirty (30) months of the violation.
- (5) In addition to the forfeitures provided in Subsections (b)(1)-(4) above, a court shall suspend any license issued under this Chapter to a person violating this Subsection for:
 - (a) Not more than three (3) days, if the court finds that the person has committed a violation within twelve (12) months after committing one (1) previous violation;
 - (b) Not less than three (3) days nor more than ten (10) days, if the court finds that the person has committed a violation within twelve (12) months after committing two (2) other violations; or
 - (c) Not less than fifteen (15) days nor more than thirty (30) days, if the court finds that the person committed the violation within twelve (12) months after committing three (3) other violations.
- (c) **Exception.** A person who holds a Class “A” license, a Class “B” license or permit, a “Class A” license or a “Class B” license or permit who commits a violation is subject to Subsection (b)(5) but is not subject to Subsection (b)(1)-(4) or §125.11, Wis. Stats.
- (d) **Sale of Alcohol Beverages to Intoxicated Persons.**
 - (1) **Restrictions.**
 - (a) No person may procure for, sell, dispense or give away alcohol beverages to a person who is intoxicated.
 - (b) No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with a person who is intoxicated.
- (e) **Penalties.** Any person who violates Subsection (d)(1) above shall be subject to a forfeiture of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00).

State Law Reference: §125.07, Wis. Stats.

Sec. 11-4-2 Underage Persons’ Presence in Places of Sale; Penalty

- (a) **Restrictions.** An underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age may not enter, knowingly attempt to enter, or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued for any purpose except the transaction of business pertaining to the licensed premises with or for the license or his or her employee. The business may not be amusement or the purchase, receiving or consumption of edibles or beverages or similar activities which normally constitute activities of a customer of the premises. This Subsection does not apply to:

- (1) An underage person who is a resident, employee, lodger or boarder on the premises controlled by the proprietor, licensee, or permittee of which the licensed premises consists or is a part.
- (2) An underage person who enters or is on a "Class A" or Class "A" premises for the purpose of purchasing other than alcohol beverages. An underage person so entering the premises may not remain on the premises after the purchase.
- (3) Hotels, drug stores, grocery stores, bowling alleys, indoor golf simulator facilities, service stations, vessels, cars operated by any railroad, regularly established athletic fields, outdoor volleyball courts that are contiguous to a licensed premises, stadiums or public facilities as defined in §125.51(5)(b)1.d, Wis. Stats., which are owned by a county or municipality, or centers for the visual or performing arts.
- (4) Premises in the state fair park, concessions authorized on state-owned premises in the state parks and state forests as defined or designated in Chapters 27 and 28, Wis. Stats., and parks owned or operated by agricultural societies.
- (5) Ski chalets, golf courses and golf clubhouses, racetracks licensed under Chapter 562, Wis. Stats., curling clubs, private soccer clubs and private tennis clubs.
- (6) Premises operated under both a "Class B" or Class "B" license or permit and a restaurant permit where the principal business conducted is that of a restaurant. If the premises are operated under both a "Class B" or Class "B" license or permit and a restaurant permit, the principal business conducted is presumed to be the sale of alcohol beverages, but the presumption may be rebutted by competent evidence.
- (7) Premises operating under both a "Class C" license and a restaurant permit.
- (8) An underage person who enters or remains in a room on Class "B" or "Class B" licensed premises separate from any room where alcohol beverages are sold or served, if no alcohol beverages are furnished or consumed by any person in the room where the underage person is present and the presence of underage persons is authorized under this Subsection. (An underage person may enter and remain on Class "B" or "Class B" premises under this Subsection only if the Town adopts an ordinance permitting underage persons to enter and remain on the premises as provided in this Subsection and the Town Police Department issues to the Class "B" or "Class B" licensee a written authorization permitting underage persons to be present under this Subsection on the date specified in the authorization. Before issuing the authorization, the Town Police Department shall make a determination that the presence of underage persons on the licensed premises will not endanger their health, welfare or safety or that of other members of the Town. The licensee shall obtain a separate authorization for each date on which underage persons will be present on the premises.)

- (9) A person who is at least eighteen (18) years of age and who is working under a contract with the licensee, permittee or corporate agent to provide entertainment for customers on the premises.
- (10) An underage person who enters or remains on Class “B” or “Class B” licensed premises on a date specified by the licensee or permittee during times when no alcohol beverages are consumed, sold or given away. During those times, the licensee, the agent named in the license if the licensee is a corporation or limited liability company or a person who has an operator’s license shall be on the premises unless all alcohol beverages are stored in a locked portion of the premises. The licensee shall notify the Police Department, in advance, of the times underage persons will be allowed on the premises under this Subsection.
- (11) An underage person who enters or remains in a dance hall attached to Class “B” or “Class B” licensed premises if the dance hall is separate from any room where alcohol beverages are sold, if there is a separate entrance to the dance hall and if not alcohol beverages are furnished or consumed by any person in the dance hall where the underage person is present.
- (12) An underage person who enters and remains on premises for which a temporary Class “B” license is issued under §125.26, Wis. Stats., if the license is authorized by the official or body of the Town that issued the license to permit underage persons to be on the premises under §125.26(6), Wis. Stats., and if the licensee permits underage persons to be on the premises.
- (b) **Penalties.** A licensee or permittee who directly or indirectly permits an underage person to enter or be on a licensed premises in violation of Subsection (a) above is subject to a forfeiture of not more than Five Hundred Dollars (\$500.00).

Sec. 11-4-3 Underage Persons; Prohibitions; Penalties.

- (a) **Prohibitions.** Any underage person who does any of the following is guilty of a violation:
 - (1) Procures or attempts to procure alcohol beverages from a license or permittee.
 - (2) Unless accompanied by a parent, guardian or spouse who has attained the legal drinking age, possesses or consumes alcohol beverages on licensed premises.
 - (3) Enters, knowingly attempts to enter or is on licensed premises in violation of Section 11-4-2(a).
 - (4) Falsely represents his or her age for the purpose of receiving alcohol beverages from a licensee or permittee.
- (b) **Adult to Accompany.** Except as provided in Subsection (c) below, any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age who knowingly possesses or consumes fermented malt beverage is guilty of a violation.

- (c) **Exceptions.** An underage person may possess alcohol beverages in the course of employment during his or her working hours if employed by any of the following:
- (1) A brewer.
 - (2) A fermented malt beverages wholesaler.
 - (3) A permittee other than a Class “B” or “Class B” permittee.
 - (4) A facility for the production of alcohol fuel.
 - (5) A retail licensee or permittee under the conditions specified in §125.32(2) or 125.68(2), Wis. Stats., or for delivery of unopened containers to the home or vehicle of a customer.
 - (6) A campus, if the underage person is at least eighteen (18) years of age and is under the immediate supervision of a person who has attained the legal drinking age.
- (d) **Penalties for Subsection (a) Violations.** Any person violating Subsection (a) is subject to the following penalties:
- (1) For a first (1st) violation, a forfeiture of not more than Two Hundred Fifty Dollars (\$250.00), suspension of the person’s operating privilege as provided under §343.30(6)(b)1, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g) or any combination of these penalties.
 - (2) For a violation committed within twelve (12) months of a previous violation, either a forfeiture of not less than Three Hundred Dollars (\$300.00) not more than Five Hundred Dollars (\$500.00), suspension of the person’s operating privilege as provided under §343.30(6)(b)(1), Wis. Stats., participation in a supervised work program or other community service work under Subsection (g) or any combination of these penalties.
 - (3) For a violation committed within twelve (12) months of two (2) previous violations, either a forfeiture of not less than Five Hundred Dollars (\$500.00) nor more than Seven Hundred Fifty Dollars (\$750.00), revocation of the person’s operating privilege under §343.30(6)(b)3, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g) or any combination of these penalties.
 - (4) For a violation committed within twelve (12) months of three (3) or more previous violations, either a forfeiture of not less than Seven Hundred Dollars (\$700.00) nor more than One Thousand Dollars (\$1,000.00), revocation of the person’s operating privilege under §343.30(6)(b)3, Wis. Stats., participation in a supervised work program or other community service work or any combination of these penalties.
- (e) **Penalties for Subsection (b) Violations.** Any person violating Subsection (b) above is subject to the following penalties:
- (1) For a first (1st) violation, a forfeiture of not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Dollars (\$200.00), suspension of the person’s operating privilege as provided under §343.30(6)(b)1, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g), or any combination of these penalties.

- (2) For a violation committed within twelve (12) months of a previous violation, either a forfeiture of not less than Two Hundred Dollars (\$200.00) nor more than Three Hundred Dollars (\$300.00), suspension of the person's operating privilege as provided under §343.30(6)(b)2, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g), or any combination of these penalties.
- (3) For a violation committed within twelve (12) months of two (2) previous violations, either a forfeiture of not less than Three Hundred Dollars (\$300.00) nor more than Five Hundred Dollars (\$500.00), revocation of the person's operating privilege under §343.30(6)(b)3, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g), or any combination of these penalties.
- (4) For a violation committed within twelve (12) months of three (3) or more previous violations, either a forfeiture of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), revocation of the person's operating privilege under §343.30(6)(b)3, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g), or any combination of these penalties.
- (f) **Multiple Violations From an Incident.** For purposes of Subsections (a) or (b) above, all violations arising out of the same incident or occurrence shall be counted as a single violation.
- (g) **Work Programs.**
 - (1) A supervised work program ordered under Subsections (d) or (e) above shall be administered by the county department under §46.215 or 46.22, Wis. Stats., or by a community agency approved by the court. The court shall set standards for the supervised work program within the budgetary limits established by the county board of supervisors. The supervised work program may provide the person with reasonable compensation reflecting the market value of the work performed or it may consist of uncompensated community service work. Community service work ordered under Subsection (d) or (e), other than community service work performed under a supervised work program, shall be administered by a public agency or nonprofit charitable organization approved by the court. The court may use any available resources, including any community service work program, in ordering the child to perform community service work under Subsection (d) or (e).
 - (2) The supervised work program or other community service work shall be of a constructive nature designed to promote the person's rehabilitation, shall be appropriate to the person's age level and physical ability and shall be combined with counseling from a member of the staff of the county department, community agency, public agency or nonprofit charitable organization or other qualified person. The supervised work program or other community service work may not conflict with the person's regular attendance at school. The amount of work required shall be reasonably related to the seriousness of the person's offense.

- (h) **Disclosure of License Revocation Information.** When a court revokes or suspends a person's operating privilege under Subsections (d) or (e), the Wisconsin Department of Transportation may not disclose information concerning or relating to the revocation or suspension to any person other than a court, district attorney, county corporation counsel, city, village or town attorney, law enforcement agency or the person whose operating privilege is revoked or suspended. A person entitled to receive information under this Subsection may not disclose the information to any other person or agency.
- (i) **Applicability of Statutory Proceedings.** A person who is under eighteen (18) years of age on the date of disposition is subject to §938.44, Wis. Stats., unless proceedings have been instituted against the person in a court of civil or criminal justice after dismissal of the citation under §938.344(3), Wis. Stats.
- (j) **Alcohol Abuse Programs.**
- (1) In this Subsection, "defendant" means a person found guilty of violating Subsections (a) or (b) who is eighteen (18), nineteen (19), or twenty (20) years of age.
 - (2) After ordering a penalty under Subsections (d) or (e), the court, with the agreement of the defendant, may enter an additional order staying the execution of the penalty order and suspending or modifying the penalty imposed. The order under this Subsection shall require the defendant to do any of the following:
 - (a) Submit to an alcohol abuse assessment that conforms to the criteria specified under §938.547(4), Wis. Stats., and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to conduct the alcohol abuse assessment and shall specify the date by which the assessment must be completed.
 - (b) Participate in an outpatient alcohol abuse treatment program at an approved treatment facility, if an alcohol abuse assessment conducted under Subsection (j)(2)a recommends treatment.
 - (c) Participate in a court-approved alcohol abuse education program.
 - (3) If the approved treatment facility, with the written informed consent of the defendant, notifies the agency primarily responsible for providing services to the defendant that the defendant has submitted to an assessment under Subsection (j)(2)a and that the defendant does not need treatment or education, the court shall notify the defendant of whether or not the penalty will be reinstated.
 - (4) If the defendant completes the alcohol abuse treatment program or court-approved alcohol abuse education program, the approved treatment facility or court-approved alcohol abuse education program shall, with the written informed consent of the defendant, notify the agency primarily responsible for providing services to the defendant that the defendant has complied with the order and the court shall notify the defendant of whether or not the penalty will be reinstated. If the court had ordered the suspension of the defendant's operating privilege under Subsection (d) or (e), the court may order the secretary of transportation to reinstate the

operating privilege of the defendant if he or she completes the alcohol abuse treatment program or court-approved alcohol abuse education program.

- (5) If an approved treatment facility or court-approved alcohol abuse education program, with the written informed consent of the defendant, notifies the agency primarily responsible for providing services to the defendant that the defendant is not participating in the program or that the defendant has not satisfactorily completed a recommended alcohol abuse treatment program or an education program, the court shall hold a hearing to determine whether the penalties under Subsection (d) or (e) should be imposed.

Sec. 11-4-4 Defense of Sellers.

- (a) **Defenses.** In determining whether or not a licensee or permittee has violated Sections 11-4-1(a) or 11-4-2(a), all relevant circumstances surrounding the presence of the underage person or the procuring, selling, dispensing or giving away of alcohol beverages may be considered, including any circumstances listed below. In addition, proof of all of the following facts by a seller of alcohol beverages to an underage person is a defense to any prosecution for a violation of this Section:

- (1) That the purchaser falsely represented that he or she had attained the legal drinking age.
- (2) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the legal drinking age.
- (3) That the sale was made in good faith and in reliance on the written representation and appearance of the purchaser in the belief that the purchaser had attained the legal drinking age.
- (4) That the underage person supported the representation under Subsection (a)(1) above with documentation that he/she had attained the legal drinking age.

- (b) **Book Kept by Licensees and Permittees.**

- (1) Every retail alcohol beverage licensee or permittee may keep a book for the purposes of Subsection (a) above. The licensee or permittee or his or her employee may require any of the following persons to sign the book:
 - (a) A person who has shown documentary proof that he or she has attained the legal drinking age if the person's age is in question.
 - (b) A person who alleges that he or she is the underage person's parent, guardian or spouse and that he or she has attained the legal drinking age, if the licensee or permittee or his or her employee suspects that he or she is not the underage person's parent, guardian or spouse or that he or she has not attained the legal drinking age.
- (2) The book may show the date of the purchase of the alcohol beverage, the identification used in making the purchase or the identification used to

establish that a person is an underage person's parent, guardian or spouse and has attained the legal drinking age, the address of the purchase and the purchaser's signature.

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

**Sec. 11-4-5 Persons Who Have Attained the Legal Drinking Age;
False or Altered Identification Cards.**

- (a) (1) Any person who has attained the legal drinking age, other than one authorized by §125.08 or §343.50, Wis. Stats., who makes, alters or duplicates an official identification card may be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00).
- (2) Any person who has attained the legal drinking age who, in applying for an identification card, presents false information to the issuing officer may be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00).
- (b) Any underage person who does any of the following is subject to the penalties specified under Section 11-4-3(d) or (e):
 - (1) Intentionally carries an official identification card not legally issued to him or her, an official identification card obtained under false pretenses or an official identification card which has been altered or duplicated to convey false information. A law enforcement officer shall confiscate any card that violates this Subsection.
 - (2) Makes, alters or duplicates an official identification card.
 - (3) Presents false information to an issuing officer in applying for an official identification card.

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

**Sec. 11-4-6 Possession of Alcohol Beverages on School Grounds
Prohibited.**

- (a) In this Subsection:
 - (1) **Motor vehicle** means a motor vehicle owned, rented or consigned to a school.
 - (2) **School** program for one (1) or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.
 - (3) **School administrator** means the person designated by the governing body of a school as ultimately responsible for the ordinary operations of a school.
 - (4) **School premises** means premises owned, rented or under the control of a school.

- (b) Except as provided by Subsection (c) no person may possess or consume alcohol beverages;
 - (1) On school premises;
 - (2) In a motor vehicle, if a pupil attending the school is in the motor vehicle; or
 - (3) While participating in a school-sponsored activity.
- (c) Alcohol beverages may be possessed or consumed on school premises, in motor vehicles or by participants in school-sponsored activities if specifically permitted in writing by the school administrator consistent with applicable laws and ordinances.
- (d) A person who violates this Section is subject to a forfeiture of not more than Two Hundred Dollars (\$200.00), except that §938.344, Wis. Stats., and Section 11-4-3(d) and (e) of this Code of Ordinances provide the penalties applicable to underage persons.

Cross Reference: Section 11-6-5

Sec. 11-4-7 Adult Permitting or Encouraging Underage Violation.

- (a) No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the person or under the person's control. This Subsection does not apply to alcohol beverages used exclusively as part of a religious service.
- (b) No adult may intentionally encourage or contribute to a violation of Section 11-4-3(a) or (b).
- (c) A person who violates this Section is subject to a forfeiture of not more than Two Hundred Dollars (\$200.00).

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

Sec. 11-4-8 Solicitation of Drinks Prohibited.

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

Title 11 – Chapter 5

Offenses by Juveniles

11-5-1	Town Jurisdiction Over Persons 12 through 17 Years of Age
11-5-2	Enforcement and Penalties

Sec. 11-5-1 Town Jurisdiction Over Persons 12 through 17 Years of Age.

- (a) **Adoption of State Statute.** §938.17(2), Wis. Stats., is hereby adopted and by reference made a part of this Section as if fully set forth herein.
- (b) **Provisions of Ordinance Applicable to Persons 12 through 17 Years of Age.** Subject to the provisions and limitations of §938.17(2), Wis. Stats., complaints alleging a violation of any provision of this Code of Ordinances against persons twelve (12) through seventeen (17) years of age may be brought on behalf of the Town of Oshkosh and may be prosecuted utilizing the same procedures in such cases as are applicable to adults charged with the same offense.
- (c) **No incarceration as Penalty.** The Court shall not impose incarceration as a penalty for any person convicted of an offense prosecuted under this Section.
- (d) **Additional Prohibited Acts.** In addition to any other provision of the Town of Oshkosh Code of Ordinances, no person age twelve (12) through seventeen (17) shall own, possess, ingest, buy, sell, trade, use as a beverage, give away or otherwise control any intoxicating liquor or fermented malt beverage in violation of Chapter 125, Wis. Stats.
- (e) **Penalty for Violations of Subsection (d).** Any person twelve (12) through seventeen (17) years of age who shall violate the provisions of Subsection (d) shall be subject to the same penalties as are provided in Section 1-1-6 of these ordinances exclusive of the provisions therein relative to commitment in the County Jail.

Sec. 11-5-2 Enforcement and Penalties.

- (a) **Citation Process.** Juveniles may be cited by the citation process on a form approved by the Town Attorney and shall contain on the reverse side the penalties that the juvenile may receive simultaneously with issuing the citation to the juvenile. A carbon copy will be mailed to the parent or legal guardian.
- (b) **Penalties.** Violations by a person under the age of eighteen (18) shall be punishable according to § 938.17(2), 938.43, 938.344 and 938.345 of the Wisconsin Statutes. Nothing in this Section shall prevent the juvenile officer, in his discretion, from referring cases directly to the District Attorney's office.

Title 11 – Chapter 6

Public Nuisances

11-6-1	Public Nuisances Prohibited
11-6-2	Public Nuisances Defined
11-6-3	Public Nuisances Affecting Health
11-6-4	Public Nuisances Affecting Peace and Safety
11-6-5	Abatement of Public Nuisances
11-6-6	Cost of Abatement
11-6-7	Enforcement; Penalty

Sec. 11-6-1 Public Nuisances Prohibited.

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

Sec. 11-6-2 Public Nuisance Defined.

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

- (a) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;
- (b) In any way render the public insecure in life or in the use of property;
- (c) Greatly offends the public morals or decency;
- (d) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property.
- (e) Any condition or use of premises or of building exteriors which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which such premises are located.

Sec. 11-6-3 Public Nuisances Affecting Health.

The following acts, omissions, places, conditions and things are hereby specifically declared to be public health nuisances, but such enumeration shall not be construed to exclude other health nuisances coming within the definition of Section 11-6-2:

- (a) **Adulterated Food.** All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.

- (b) **Unburied Carcasses.** Carcasses of animals, birds or fowl not intended for human consumption or foods which are not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death.
- (c) **Breeding Places for Vermin, Etc.** Accumulations of decayed animal or vegetable matter, rubbish, rotting lumber, bedding, packing material, scrap metal or any material whatsoever in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed.
- (d) **Water Pollution.** The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage, creamery or industrial wastes or other substances.
- (e) **Noxious Odors, Etc.** Any use of property, substances or things within the Town causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, gases, effluvia or stench extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the Town. This definition shall not apply to odors produced through the operation of farming practices.
- (f) **Animals at Large.** All domestic animals running at large, including, without limitation, dogs, cats, horses, llamas, and all other types of domestic pets.
- (g) **Air Pollution.** The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the Town limits or within one (1) mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property.
- (h) **Abandoned Wells.** All abandoned wells not securely covered or secured from public use.
- (i) **Inoperable/Junked Vehicles.** Dissembled, dismantled, partially dismantled, inoperable, junked, wrecked, or unlicensed motor vehicles, truck bodies, tractors, trailers, boats, or campers in such state of physical or mechanical ruin as to be incapable of propulsion or of being operated upon the public streets, highways, or waters. (Exceptions to this restriction are when such items are property housed in a building or contained within screened fencing and out of public view and should not be considered a public nuisance.)
- (j) **Abandoned Equipment.** Abandoned, discarded or unused objects or equipment, including but not limited to furniture, stoves, refrigerators, freezers, cans, containers, lumber, trash, debris, or yard waste. (Exceptions to this restriction are when such items are property housed in a building or contained within screened fencing and out of public view and should not be considered a public nuisance.)
- (k) **Rodents.** All structures and exterior property shall be kept free from rodent infestation. Where rodents are found, approved processes shall promptly exterminate them, which will not be injurious to human health. After extermination, proper precautions shall be taken to prevent re-infestation.

Sec. 11-6-4 Public Nuisances Affecting Peace and Safety.

The following acts, omissions, places, conditions and things are hereby declared to be public nuisances affecting peace and safety, but such enumeration shall not be

construed to exclude other nuisances affecting public peace or safety coming within the definition of Section 11-6-2. Agriculturally-related farm activities are exempt from the definition of public nuisances contained in this Subsection:

- (a) **Obstructions of Streets; Excavations.** All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the ordinances of the Town or which, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished.
- (b) **Open Excavations.** All open and unguarded pits, wells, excavations, and all unused, abandoned or uninhabitable buildings and basements accessible from any public street, alley or sidewalk.
- (c) **Junk Materials.** Any junk, wood, bricks, cement, concrete blocks, abandoned vehicles, or machinery or parts thereof, refrigerators, furnaces, washing machines, stoves, and other appliances or any other unsightly accumulation of items or materials such as may tend to depreciate property values in the area, or create blighted condition, or create a hazard except when such items are properly housed and out of public view.
- (d) **Unlawful Street Use.** Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.
- (e) **Additional Items.** All items enumerated in Section 11-6-3.

Sec. 11-6-5 Abatement of Public Nuisances.

- (a) **Inspection of Premises.** Whenever a complaint is made to the Town Board that a public nuisance exists within the Town, the Town Board shall inspect or cause to be inspected the subject of the complaint. The complaint must be made in writing or in person to the Town Board.
- (b) **Notice to Owner.** If the Town Board, or designee, determines that a public nuisance exists within the Town, it shall provide notice to the person causing, permitting or maintaining such nuisance or the owner or occupant of the premises where such nuisance exists. The notice shall direct the person causing, permitting or maintaining the nuisance or the owner or occupant of the premises to abate or remove such nuisance within thirty (30) days. The notice shall also state that unless such nuisance is so abated, the Town shall cause the same to abate and will charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.
- (c) **Abatement by Town.** If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the officer having the duty of enforcement shall cause the abatement or removal of such public nuisance.
- (d) **Abatement by Court Action.** If the Town determines that a public nuisance exists on private premises, but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals or decency, the Town may cause an action to abate such nuisance to be commenced in the name of the Town in Winnebago County Circuit Court.

- (e) **Court Order.** Except where necessary under Subsection (a), no officer hereunder shall use force to obtain access to private property to abate a public nuisance, but shall request permission to enter upon private property if such premises are occupied and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.
- (f) **Other Methods Not Excluded.** 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.

Sec. 11-6-6 Cost of Abatement.

In addition to any other penalty imposed by this Chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Town shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance, such cost shall be assessed against the real estate as a special charge.

Sec. 11-6-7 Enforcement; Penalty.

- (a) **General Penalty.** Any person who shall violate any provision of this Chapter shall be subject to a penalty as provided in Section 1-1-6. Each day that a violation continues shall be considered a separate offense. Furthermore, the Town shall be permitted to withhold the issuance of licenses, authorities, grants or permits until the nuisance has been abated and all penalties and costs.
- (b) **Interpretation.** The provisions of this Chapter are not intended to supersede or modify provisions of existing zoning ordinances or other rules, regulations and ordinances adopted by the Town. Where the provisions of this Chapter impose greater restrictions than any statute, ordinance or covenant, the provisions of this Chapter shall prevail. Where the provisions of any statute, other regulation, ordinance or covenant impose greater restrictions than the provisions of this Chapter, the provisions of such statute, other regulation, ordinance or covenant shall prevail.

Title 11 – Chapter 7

Regulating Outside Storage

11-7-1	Authority
11-7-2	Findings
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Sec. 11-7-1 Authority.

This ordinance is adopted for the good order, health, safety, welfare and convenience of the Town of Oshkosh under authority conferred by Section 61.34 of the Wisconsin Statutes.

Sec. 11-7-2 Findings.

The Town Board of the Town of Oshkosh hereby finds that the unregulated outside storage of junked, wrecked or inoperable motor vehicles and semitrailers constitutes a public nuisance by creating conditions for standing and stagnant water that harbors insects; by providing a habitat for vermin; by contaminating soil and water from improper management of hazardous fluids and substances; and creating unsightly conditions which negatively effect the value of other properties in the area.

Sec. 11-7-3 Purpose.

The intent of this ordinance is to regulate the extent and manner of outdoor storage of junk, wrecked or inoperable motor vehicles and semitrailers.

Sec. 11-7-4 Definitions.

- (a) “Motor vehicle” means any motor-driven vehicle required to be registered under Chapter 341, Wis. Stats. (§218.0101(22)).

- (b) “Semitrailer” means a vehicle of the trailer type so designed and used in conjunction with a motor vehicle so that some part of its own weight and that of its load rests upon or is carried by another vehicle. (§340.01(57)). The ordinance does not apply to any recreational trailer or any farm trailer or utility trailer with a gross weight of less than 5,000 pounds.
- (c) “Junk vehicle” means a motor vehicle or semitrailer which is incapable of operation or use upon a highway and which has no resale value except as a source of parts or scrap, or a vehicle for which an insurance company has taken possession of or title to it where the estimated cost of repairing the vehicle exceeds its fair market value. (§340.01(25)).
- (d) “Motor vehicle dealer” means any person, firm or corporation who, for commission, money or other thing of value, sells, leases, exchanges, buys, offers or attempts to negotiate a sale, consumer lease or exchange of an interest in motor vehicles or semitrailers or who is engaged in the business of selling or leasing motor vehicles or semitrailers whether or not the vehicles are owned by that person, firm or corporation. (§218.0101(23)).
- (e) “Motor vehicle salvage dealer” means a person who purchases and resells motor vehicles for wrecking, processing, scrapping, recycling or dismantling purposes or who carries on or conducts the business of wrecking, processing, scrapping or dismantling motor vehicles or selling parts of motor vehicles so processed. (§218.20(1v)).
- (f) “Wrecked motor vehicle” means a motor vehicle that is damaged to the extent that it is incapable of operation or use upon a highway, where the cost of repair is less than the market value.
- (g) “Inoperable motor vehicle” means a motor vehicle that is disabled to the extent that it is incapable of operation or use upon a highway where the cost of repair is less than the market value.
- (h) “Wrecked or inoperable semitrailer” means a semitrailer that is damaged or inoperable to the extent that it is incapable of operation or use upon a highway.

Sec. 11-7-5 Regulations for junk motor vehicles.

There shall be no outside storage of junk vehicles and semitrailers except as follows:

- (a) A state licensed motor vehicle salvage dealer in compliance with Town zoning regulations.
- (b) A towing company limited to no more than 4 junk motor vehicles stored outside at any one time. No one vehicle shall be stored outside for more than 30 days.

- (c) A motor vehicle repair shop limited to no more than 2 junk motor vehicles stored outside at any one time. No one vehicle shall be stored outside for more than 30 days.
- (d) A state licensed motor vehicle dealer limited to no more than 2 junk motor vehicles stored outside at any one time. No one vehicle shall be stored outside for more than 30 days.
- (e) Motor vehicles that meet the definition of “collector” vehicle in Section 341.266 Wis. Stats.

Sec. 11-7-6 Regulations for wrecked motor vehicles and inoperable motor vehicles.

There shall be no outside storage of wrecked motor vehicles and inoperable motor vehicles except as follows:

- (a) A state licensed motor vehicle salvage dealer or salvage yard in compliance with Town zoning regulations.
- (b) A towing company limited to no more than 8 wrecked or inoperable motor vehicles stored outside at any one time. No one vehicle shall be stored outside for more than 45 days.
- (c) A motor vehicle repair shop limited to no more than 10 wrecked or inoperable motor vehicles stored outside. No one vehicle shall be stored outside for more than 30 days without a written repair authorization and written repair order pursuant to Chapter ATCP 132.02 and 132.03 Wis. Admin. Code.
- (d) A state licensed motor vehicle dealer limited as set forth in subparagraph (c) above.

Sec. 11-7-7 Regulations for semitrailers.

There shall be no outside storage of junked, wrecked or inoperable semitrailers except as follows:

- (a) A state licensed vehicle salvage dealer or yard in compliance with Town zoning regulations.
- (b) A truck terminal or warehouse business limited to not more than 2 wrecked or inoperable semitrailers outside at any one time. No one semitrailer shall be stored outside for more than 90 days.
- (c) A truck repair business as set forth in subparagraph (b) above.

Sec. 11-7-8 Regulations for outside storage conditions.

Outside storage areas shall, at a minimum, provide as follows:

- (a) A level well drained storage area.
- (b) An impermeable asphalt or concrete surface pad or a gravel pad of not less than 8 inches of compacted gravel sufficient in size to store all permitted junk, wrecked or inoperable motor vehicles and semitrailers.
- (c) An opaque and secure perimeter fence enclosure not less than 6 feet in height.

Sec. 11-7-9 Appeals.

Appeals to the Planning and Zoning Committee may be taken by any person aggrieved by any decision in the enforcement of this ordinance. The Planning and Zoning Committee shall fix a reasonable time for the hearing of the appeal and give public notice as well as notice to the parties in interest and decide the matter within a reasonable period of time.

Sec. 11-7-10 Variances.

The Planning and Zoning Committee may, upon appeal in specific cases, authorize a variance from the terms of this Ordinance as will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty and unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

Sec. 11-7-11 Penalties.

Any person, firm or corporation who violates any of the provisions of this Ordinance shall, upon conviction of such violation, be subject to a penalty as follows:

- (a) First Offense: A forfeiture of not less than \$50.00 nor more than \$300.00 per vehicle, together with the cost of prosecution.
- (b) Second Offense within 12 months of Prior Conviction: A forfeiture of not less than \$250.00 nor more than \$1,000.00 together with the cost of prosecution.
- (c) Continued Violations: Each violation and each day a violation continues or occurs shall constitute a separate offense.

- (d) Other Remedies: Payment of a forfeiture does not relieve a person, firm or corporation from the obligation to comply with the Ordinance. Nothing shall preclude the Town from maintaining any appropriate action to prevent or remove a violation.