

CHAPTER 9

ORDERLY CONDUCT

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9.01 OFFENSES AGAINST STATE LAWS SUBJECT TO FORFEITURE. (Rep. & Recr. Ord. #2123 – 8/16/93; Rep. & Recr. Ord. #2648 – 3/16/09).

(1) STATE STATUTES ADOPTED. In accordance with sec. 66.0107, Wis. Stats., the following provisions of the Wisconsin Statutes, as updated and revised from time to time, are hereby adopted by reference except for the penalty provisions contained therein: sec. 939.05; sec. 939.30; sec. 939.31; chapters 941 through 948, but not including sec. 944.21; chapter 951; sec. 961.573(1) – (2); sec. 961.574(1) – (2); and sec. 961.575(1) – (2).

(2) DEFINITIONS.

(a) For the purpose of this section, the definitions of words and phrases contained in sec. 939.22, chapters 941 through 948, chapter 951 and sec. 961.01 of the Wisconsin Statutes, as updated and revised from time to time, are hereby adopted by reference.

(b) In the statutes adopted by this section, the following definitions shall apply:

1. The word “crime” shall mean offense.
2. The phrase “criminal intent” shall mean intent.
3. The word “court” shall mean Mid-Moraine Municipal Court.
4. The phrase “District Attorney” shall mean City Attorney.

(3) ATTEMPT.

(a) Whoever attempts to commit an offense under this section may be subject to a forfeiture not to exceed one-half of the maximum penalty for the completed offense.

(b) An attempt to commit an offense under this section requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute such offense and that he or she does acts toward the commission of the offense which demonstrate unequivocally, under all the circumstances, that he or she formed that intent and would commit the offense except for the intervention of another person or some other extraneous factor.

(4) LIMITATION. (Am. Ord. #2430 – 4/15/02) The foregoing statutes as adopted do not apply to circumstances under which the actor could be charged with a felony as defined and classified by secs. 939.50 and 939.60, Wis. Stats., unless the matter has been referred to the District Attorney and the District Attorney refused to prosecute the matter as a criminal charge.

(5) PENALTIES. The penalty for violating the provisions adopted herein shall be a forfeiture imposed under sec. 25.04 of this Code.

9.02 POSSESSION AND USE OF FIREARMS AND OTHER DANGEROUS WEAPONS.

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

(a) Facsimile Firearm. (Cr. Ord. #2104 – 3/8/93; Rep. Ord. #2175 – 10/10/94 State Statute Adopted.)

(am) Firearm. Any weapon from which a shot may be fired by the force of an explosive or propellant, including, but not limited to, air guns and BB guns.

(b) Other Dangerous Weapon. Includes bow and arrow crossbow, sling shot, blow gun and other similar weapons.

(c) (Repealed Ord. #2232 – 12/18/95)

(d) (Repealed Ord. #2232 – 12/18/95)

(e) (Repealed Ord. #2232 – 12/18/95)

(2) **POSSESSION OF FIREARMS.** (Rep. Ord. #2232 – 12/18/95; Cr. Ord. #2697 – 10/1/11- Effective 11/1/11). Sections 175.60(2g) (b) and (c) and 175.60 (16) of the Wisconsin Statutes, as updated and revised from time to time, are hereby adopted by reference.

(3) **USE OF FIREARMS** (Rep. & Recr. Ord. #2232 – 12/18/95).

(a) Regulated. No person except an authorized police officer shall discharge any firearm within the City, except as provided in par. (b) below.

(b) Exceptions.

1. Police firing range.

2. Uses granted under a conditional use permit pursuant to Chapter 17 of this Code.

3. (Cr. Ord. #2697 – 10/1/11). As specified in Section 66.0409 (3) (b), Wis. Stats.

(4) **USE OF OTHER DANGEROUS WEAPONS** (Am. Ord. #2751 – 4/11/14).

(a) Regulated. No person shall shoot or discharge any other dangerous weapon except as provided in paragraph (b) below.

(b) Exceptions.

1. Areas designated as shooting ranges by the Park and Recreation Commission or approved by any school authority.
2. Uses granted under a conditional use permit pursuant to Chapter 17 of this Code.
3. When lawfully hunting with a bow and arrow or crossbow at a distance greater than 100 yards from a building located on another person's land as described in Section 29.038(3)(b)1.a. Wisconsin Statutes. This restriction does not apply if the person who owns the land on which the building is located allows the hunter to hunt within 100 yards of the building. A person who discharges a bow and arrow or crossbow within the City of West Bend is required to discharge the arrow or bolt from the respective weapon toward the ground.

(5) (Cr. Ord. #2104 – 3/8/93; Rep. Ord. #2175 – 10/10/94 State Statute Adopted.)

9.03 THROWING STONES AND OTHER MISSILES

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

9.04 PRESERVATION OF WILDLIFE. (Am. Ord. #2355 - 12/6/99)

(1) **KILLING AND TRAPPING PROHIBITED.** No person shall, within the limits of the City, shoot, trap or kill any song bird or game bird of any description or any animal, or make any attempt to shoot, trap or kill any bird or birds or any animal with a gun, pistol, BB gun or any other firearm of any description, or with any sling or other contrivance for the purpose of throwing stone, brick, shot or any other hard substance except as provided in sub (2).

(2) **EXCEPTIONS.** Sub. (1) Shall not apply to:

- (a) Live box trapping of wild animals;
- (b) Actions inside a building to rid the building of vermin or pests;
- (c) Actions by police officers, or by other persons authorized by the Chief of Police, to abate nuisances or to other-wise protect the public health, safety and welfare; or
- (d) Actions permitted in parks by the Director of Parks, Recreation and Forestry as provided in Chapter 20 of this Code.

9.05 SALE AND DISCHARGE OF FIREWORKS

RESTRICTED. (Am. Ord. #2553 – 2/14/05; Am. Ord. #2660 – 8/3/09).

(1) PRIVATE USE AND SALE. No person shall sell, expose or offer for sale, use, keep, discharge or explode any fireworks within the limits of the City unless he shall be authorized by a fireworks permit as hereinafter provided. The term "fireworks", as used in this section, shall be defined as provided in section 5.217 of this Code.

(2) FIREWORKS PERMIT. (Am. Ord. #2660 – 8/3/09). See sec. 5.22 of this Code.

9.06 (Renumbered Ord. #2362 - 3/20/00 -- see 9.07(2)).

9.07 ANIMALS OR SPECIES PROHIBITED WITHIN THE CITY.

(1) KEEPING OF FOWL PROHIBITED. (Am. Ord.# 2823 – 1/26/19) (Rep. & Recr. Ord. #2470 - 2/10/03) Except as provided in Section 9.075, no person shall keep, raise or have in his possession any live fowl within the City, erect or maintain and use on any lot or parcel of land within the City any run, coop, structure or other building for the purpose of keeping or housing any type of fowl, including, but not limited to, chickens, geese, ducks, turkeys, pheasants or guinea hens, except, however, the keeping of racing or show pigeons.

(2) KEEPING OF LIESTOCK PROHIBITED (Am. Ord. #2736 – 5/1/13).

(a) No person shall keep any livestock within the City, including, but not limited to, cattle, horses, mules, goats, sheep or pigs.

(b) Keeping of Pot-Bellied Pigs. The provisions of (a) do not apply to or include the subspecies of *sus scrofa* commonly known as Pot-Bellied Pig. Persons keeping Pot-Bellied Pigs in the city must comply with the following requirements:

1. Every owner of a Pot-Bellied Pig shall pay a license fee and obtain a license in the same manner as is provided for the licensing of dogs under Chapter 12.17 of the Code and Sections 174.05 and 174.07, Wis. Stats, respectively.

2. All Pot-Bellied Pigs kept in the City must not exceed 35 pounds. Prior to obtaining any license, every owner must produce a certification from a reputable breeder that the Pot-Bellied Pig being licensed will not exceed 35 pounds at any point during its lifespan.

3. Pot-Bellied Pigs must be spayed or neutered prior to receiving the license required by this Section 9.07(2)(b).

(3) KEEPING OF WILD AND EXOTIC ANIMALS PROHIBITED.

(a) No person shall keep, maintain or have in such person's possession or under such person's control any poisonous reptile, dangerous or wild animal or insect, including, but not limited to, poisonous insects and arachnids, all poisonous snakes, constrictor snakes, any snake exceeding four (4) feet in length, non-human primates, bears, crocodiles, alligators, coyotes, elephants, gamecocks and other fighting birds, hippopotami, hyenas, jaguars, leopards, lions, lynx, pumas, cougars, mountain lions, panthers, ocelots, tigers, or other wild feline species, wolf hybrids and wolves.

(b) Exceptions. The prohibitions set forth in subsection (a) shall not apply to licensed pet shops, zoological gardens, public or private educational institutions, circuses and professional animal acts or other shows requiring an entertainment activity license required by sec. 12.07 of this Municipal Code; provided that:

1. Their location conforms to the zoning requirements of Chapter 17 of this Municipal Code

2. All animals and animal quarters are kept in a clean and sanitary condition and so maintained as to eliminate objectionable odors.

Animals are maintained in quarters so constructed as to prevent their escape.

9.075 KEEPING OF CHICKENS (Cr. Ord. # 2823 – 1/26/19)

(1) KEEPING OF CHICKENS.

(a) No person shall keep or harbor any chickens or build, erect or maintain and use any chicken coop or run within the City without registering the name and address of the owner, the number of chickens, and paying the requisite license fee pursuant to Section 12.175.

(b) Chickens must be contained within a coop or enclosed chicken run and may not be allowed to roam at large within or beyond the property.

(c) Prior to issuance of a site license for the keeping of chickens, the owners of adjoining and surrounding properties shall be notified by the City Treasurer of the pending license request.

(d) All chicken coops and runs wherein any chickens are contained shall be kept in a clean, sanitary condition and free from all objectionable odor or vermin.

(e) Chicken coops and runs under this section shall be limited to the keeping of up to a total of four chickens per property, and shall be subject to the following conditions:

(1) The principal use of the property where a chicken coop and yards may be permitted is limited to single-family dwellings and duplexes within single-family or two-family zoned property.

(2) No person shall keep any rooster.

(3) No person shall slaughter any chickens.

(4) Chickens shall be kept in a water-proof, rodent-proof, and predator-proof coop in a fenced-in area.

(5) Coops shall be considered accessory structures under Chapter 17 and shall be subject to all requirements of that Chapter. Coops and runs shall be placed in rear yards and shall have a minimum setback of 5 feet. No coop or run shall be placed within 25 feet of any separate residential or business structure on an adjacent lot.

(6) Enclosures for chicken runs may be comprised of welded wire or chicken wire material but may not be part of a residential fence within the property.

(7) It shall be property owner's responsibility to verify that keeping chickens and chicken coops are permitted uses in any deed restrictions or covenants applicable to the subject property.

9.08 ANIMALS NOT TO RUN AT LARGE (Rep. & Recr. Ord. #1769 – 7/15/85; Rep. & Recr. Ord.# 2768 – 8/8/15).

(1) ANIMALS AT LARGE PROHIBITED (Rep. & Recr. Ord. #1867 – 2/1/88). If any animal is at large within the city, the owner of the animal is guilty of a violation and subject to a penalty as provided in sec. 9.30 of this chapter.

(2) DEFINITIONS.

(a) Owner. Any person owning, harboring or keeping any animal or the occupant of any premises on which the animal remains or to which it customarily returns daily for a period of ten days is considered an owner within the meaning of this section and is presumed to be harboring or keeping the animal.

(b) At Large. Any animal is considered to be at large within the meaning of this section if it is off the premises of the owner and not on a leash less than 10' in length and under the control of some person. An animal is not at large if it is in a motor vehicle

with the consent of the owner or operator of the vehicle or enclosed in a cage or other container.

(3) EXCEPTION FOR TRAP-NEUTER-RETURN PROGRAM.

(a) Trap-Neuter-Return Program. The city may participate in a trap-neuter-return program (TNR) for feral cats. The TNR program shall be administered by the Washington County Humane Society at no cost to the city. The Washington County Humane Society will be responsible for the following:

1. Trapping and transportation of feral cats.
2. Examinations of feral cats for general health.
3. Vaccination of feral cats, including but not limited to vaccination for rabies.
4. Surgical sterilization of feral cats.
5. Marking of feral cats as sterilized by either ear-tipping or tattooing. Upon completion of the foregoing requirements, and with the consent of the property owner, the feral cat shall be returned to the location in which it was originally trapped. If no consent of the property owner is obtained, the feral cat shall be relocated to an alternate location.

(b) Definition of Feral Cat. For purposes of this section, a feral cat shall be defined as an unsocialized, undomesticated, free-roaming cat with a temperament of extreme fear of and resistance to contact with humans.

(c) Keeping of Sterilized Feral Cats. A property owner keeping a feral cat shall be responsible for the insuring the feral cat does not constitute a public nuisance or violate any provision of the Municipal Code, but shall be exempt from the prohibitions on animals at large in this section 9.08.

9.09 KEEPING OF NOISY ANIMALS PROHIBITED (Rep. & Recr. Ord. #1769 – 7/15/85; Am. Ord. #2502 – 10/27/03). No person shall keep or harbor any animal or fowl which, by howling, yelping, barking, crowing or making other noises, annoys or disturbs another.

9.095 REMOVAL OF ANIMAL FECES (Cr. Ord. #2025 – 2/4/91). The owner or person in control of any animal shall not permit solid fecal matter of such animal to be deposited on any street, alley or other public or private property, other than such person's property, unless such fecal matter is immediately removed there from by said owner or person in control.

9.10 STORAGE OF JUNK, ETC., REGULATED. (Am. Ord. #2364 - 03/27/00)

(1) No person shall store junked or discarded property including, without limitation, automobiles, automobile parts, trucks, tractors, refrigerators, furnaces, washing machines, stoves, machinery or machinery parts, wood, bricks, cement blocks or other unsightly material except inside a building which hides such property from public view or upon license issued by the Council.

(2) (Am. Ord. #2364 - 03/27/00) For purposes of this section, any motor vehicle which cannot be safely or legally operated, either because it is partially disassembled or wrecked or otherwise disabled or mechanically nonfunctional or because it is without current registration or registration plates, is considered junked property if it remains on the same premises for a period of five days or more.

(3) (Am. Ord. #2364 - 03/27/00; Am. Ord. #2552 – 2/7/05). The Building Inspector, Chief of Police, or their respective designees, may require by written order any premises in violation of this section to be put in compliance within the time specified in such order and, if the order is not complied with, may issue a citation for violation of this section or proceed to abate the nuisance pursuant to sec. 10.06 of this Code, or both.

9.101 OUTDOOR STORAGE REGULATED. (Cr. Ord. #2363 - 3/27/00)

(1) Definitions. As used in this section, the terms "Corner lot", "lot", "rear yard" and "side yard" have the meanings set forth in ch. 17 of this Code and "site plan" means a site plan approved under sec. 17.39 of this Code.

(2) On a lot zoned commercial or industrial, merchandise or other materials shall not be stored, left or displayed outside a building other than in the rear yard except as provided below

(a) Materials may be stored as permitted in a site plan.

(b) On a corner lot, materials may be stored in that portion of a side yard which is also in the other side yard.

(c) This section does not apply to merchandise set out for display purposes for not more than 14 hours in any day between the hours of 6:00 A.M. and 10:00 P.M.

(3) This section shall not be interpreted to excuse non-compliance with any provision of a site plan or other provisions of this Municipal Code.

9.11 RADIO OR TELEVISION INTERFERENCE

PROHIBITED. No person shall operate any machine or equipment which causes interference with radio or television reception when such interference can be prevented by repairs, adjustments, the installation of corrective appliances or other practicable alterations at a reasonable expense.

9.12 (Repealed Ord. #2660 – 8/3/09).

9.13 OPEN CISTERNS, WELLS, BASEMENTS OR OTHER DANGEROUS EXCAVATIONS PROHIBITED.

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

9.14 ABANDONED OR UNATTENDED ICE BOXES, ETC.,

PROHIBITED. No person shall leave or permit to remain outside of any dwelling, building or other structure or within any unoccupied or abandoned building, dwelling or other structure under his control 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 agent and is securely locked or fastened.

9.15 LOITERING PROHIBITED

(1) **LOITERING OR PROWLING PROHIBITED.** No person shall loiter or prowl in a place, at a time, or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon the appearance of a police or peace officer, refuses to identify himself under the circumstances which leads the officer to believe a crime has been or will be committed, or manifestly endeavors to conceal himself or any object. Unless flight by the actor or other circumstances makes it impracticable, a police or peace officer shall, prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the police or peace officer did not comply with the preceding sentence or if it appears at trial that the explanation given by the actor was true, and if believed by the police or peace officer at the time, would have dispelled the alarm.

(2) **OBSTRUCTION OF TRAFFIC BY LOITERING.** No person shall loaf or loiter in a group or a crowd upon the public streets, alleys, sidewalks, street crossings or bridges or in any other public place within the City in such manner as to prevent, interfere with or obstruct the ordinary free use of such public street, sidewalks, alleys, street crossings and bridges or other public places by persons passing along and over the same.

(3) **LOITERING AFTER BEING REQUESTED TO MOVE.**

(a) Obstructing Highways. No person shall obstruct any street, bridge, sidewalk or crossing by lounging or loitering in or upon the same after being requested to move on by any police officer.

(b) In Groups or Crowds. No person shall loaf or loiter in a group or a crowd upon the public streets or sidewalks, or in adjacent doorways or entrances, or on street crossings or bridges or in any other public place or on any private premises without invitation from the owner or occupant, after being requested to move on by any police officer or by any person in authority at such places.

(c) In Places of Public Assembly or Use. (Am. Ord. 2036 - 4/15/91). No person shall loiter, lounge or loaf in or about any depot, theater, dance hall, restaurant, store, sidewalk, parking lot, or other place of assembly or public use after being requested to move on by any police officer or by the owner or other person in charge of such place. Upon being requested to move, a person shall comply immediately with such request by leaving the premises or the area.

(d) When Signs Posted (Cr. Ord. #1980 – 12/18/99; Am. Ord. #2036 – 4/15/91). No person shall loiter, lounge or loaf on private property posted by means of a sign or signs prohibiting such conduct, without the express consent of the owner or other person in charge thereof. The presence of a person on such property for a period of ten (10) minutes or longer without such consent in writing and without transacting or causing to be transacted business with the owner, person in charge, or his/her/its agent shall be presumptive evidence of a violation of this paragraph.

(4) **PARKING AUTHORITY PROPERTY CLOSED HOURS** (Cr. Ord. 1919 – 10/10/88). Other than City employees or persons acting under authority of the City in the course of their employment, no person may be present between the hours of 9:00 P.M. and 6:00 A.M. in the following properties owned by the City for the benefit of the Parking Authority:

(a) 227 North Main Street (Bauer Bakery Lot) (green area)

(b) 165-167 North Main Street (Millbrook Lot) (green area)

(c) The property on each side of Veterans Avenue, between Main Street and the Milwaukee River.

9.151 CURFEW (Cr. Ord. #2076 – 8/10/92; Rep. & Recr. Ord. #2568 - 7/11/05).

(1) DEFINITIONS. As used in this section:

- (a) "Child" means a person who is less than 16 years of age.
- (b) "Curfew period" includes the time from 12:01 a.m. to 5:00 a.m.

(2) CURFEW ESTABLISHED. No child shall be or remain present in or upon the public streets, highways, roads, alleys, sidewalks and parks; public buildings; places of amusement and entertainment; vacant lots; or any public place in the City of West Bend, either on foot or in or upon any conveyance operated or parked, during the curfew period, unless accompanied by his or her parent, legal guardian or other adult person having his or her care, custody or control.

(3) EXCEPTIONS. The following shall constitute exceptions to the operation of the curfew:

(a) Emergency. The presence of the child is necessitated by an emergency situation in which property or human life are in jeopardy and the prompt summoning or rendering of aid is essential;

(b) Employment. The presence of the child is in the course of his or her employment duties during working hours or for travel incident thereto;

(c) Associational Activity. The child is present while traveling directly home from an associational activity. Associational activities are school or religious programs, sporting events, public entertainment such as concerts or movies, and similar activities or events;

(d) Permission. The child is on an errand at the direction of the child's parent or guardian, without any detour or stop;

(e) Interstate Travel. The child is in a motor vehicle involved in interstate travel;

(f) First Amendment Protection. The child is exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly.

(4) RESPONSIBILITY OF PARENTS. It shall be unlawful for the parent, legal guardian or other adult person having the care and custody of a child to permit or suffer him or her to violate this section.

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(5) ENFORCEMENT. Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer has probable cause to believe that an offense has occurred and that, based on any response and other circumstances, no exception in subsection (3) is present.

(6) PENALTY. Any child or other person who violates this section shall be subject to a penalty as provided in §25.04 of this Code.

9.16 LITTERING PROHIBITED. No person shall deposit any mud, glass, refuse or waste, filth or other litter upon the streets, highways, alleys, parks or other property of the City or upon any private property or into or upon any body of water or stream within the City. Any person found guilty of violating this section shall be subject to a forfeiture of not more than \$200 plus the cost of cleanup. Each day a violation continues shall constitute a separate violation.

9.17 MARIJUANA, POSSESSION AND USE PROHIBITED.

(1) DEFINITION. "Marijuana" means all parts of the plant cannabis sativa L., whether growing or not, the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin.

(2) POSSESSION, DELIVERY AND USE PROHIBITED. It shall be unlawful for any person to possess, deliver, sell or use marijuana or a marijuana derivative. This section shall include, but not be limited to, those persons who possess, deliver, sell or use marijuana or a marijuana derivative in any amount and include those persons who are charged under this section for a first offense.

(3) EXCEPTION. This section shall not apply to a person who has obtained or possesses marijuana directly from or pursuant to a valid prescription or order of a practitioner licensed to administer a controlled substance and while acting in the course of his professional practice. However, the burden of proof to prove such exception shall be on the person claiming it.

9.175 SYNTHETIC CANNABINOID, POSSESSION PROHIBITED. (Cr. Ord. #2697 – 10/1/11).

(1) DEFINITION. "Synthetic cannabinoid" means any controlled substance specific in s. 961.15(4)(tb) to (ty), Wis. Stats.

(2) POSSESSION PROHIBITED. It shall be unlawful for any person to possess a synthetic cannabinoid in any amount. This section shall only apply to those persons who are charged under this section for a first offense and who have no prior convictions for possession of a controlled substance.

9.18 NOISE (Rep. & Recr. Ord. #1815 – 8/4/86; Am. Ord. #1934 – 1/9/89; Rep. & Recr. Ord. # 2767 – 8/8/15).

(1) **CREATING LOUD AND UNNECESSARY NOISE PROHIBITED.** No person shall make or assist in making any loud, excessive or unusual noise tending to unreasonably disturb the peace and quiet of a person of ordinary sensibilities unless the noise cannot be prevented or is necessary for the health, safety or welfare of any person or the protection of preservation of property.

(2) **OWNER PERMITTING LOUD AND UNNECESSARY NOISE PROHIBITED.** No person occupying or having charge of any building or premises or any part thereof shall make or assist in the creation of loud and unnecessary noise, as defined in this section, or permit another to make loud and unnecessary noise.

(3) **EXEMPTIONS.** The provisions of this section shall not apply to:

(a) Any vehicle of the city, county or state when engaged in necessary public business.

(b) Excavations or repairs of streets or other public construction by or on behalf of the city, county or state when public welfare and convenience renders it impossible to perform such work during the day.

(c) Operation of emergency equipment. Emergency equipment shall include ambulance, police, fire, snow removal, civil defense, disaster, etc., necessary for the health, safety and protection of the citizens of the city.

(d) Snow blowers, snow plows and other snow removal equipment.

(e) Reasonable levels of noise produced by the holder of a valid license under Section 12.02(6)(b) or 12.02(10)(i) of the Municipal Code, provided said noise is produced within the restriction of those sections.

9.19 UNAUTHORIZED PRESENCE ON PUBLIC SCHOOL PROPERTY.

(1) It shall be unlawful for any unauthorized person to enter into, congregate, loiter, wander, stroll, stand or in any other way create a disturbance in any public school building in the City or in or about any school grounds under the jurisdiction of any school.

(2) Unauthorized persons shall include, but not be limited to, any of the following:

(a) Any student who is under suspension, expulsion or other discipline excluding him from attending any class or school.

(b) Non-students which shall include students from schools other than the school which has jurisdiction over the property in question.

(c) Any person not an employee of such school.

(d) Any person not a parent or guardian of a student presently enrolled in such school.

(e) Any other person who is present within any school building or upon any school grounds under the jurisdiction of such school without having first obtained authorization to be there from the administrative staff of that school or their designated representative, excluding persons while on direct route to secure such authorization.

9.20 CONSUMPTION OF FERMENTED MALT BEVERAGES AND INTOXICATING LIQUOR REGULATED.

(1) DEFINITIONS. For the purpose of this section, the terms used shall be defined as follows:

(a) Public Property. Any property, including buildings or structures thereon, which is owned, leased or operated by the City, the West Bend School District or Washington County; public sidewalks; roadways, alleys and streets; playgrounds; and parks.

(b) Public Parking Lot. Any area held out to the public for the parking of motor vehicles, whether such area is publicly or privately owned.

(c) Licensed Premises. (Am. Ord. #2809 – 4/24/2018) The area within a building or structure and/or the outdoor area which is licensed pursuant to sec. 12.02 of this Code. A licensed premises shall not include parking lots, sidewalks, roadways or land which is adjacent to the building or structure and within the property boundary lines, unless said areas are included in the description of the licensed premises or are included as a sidewalk café or outdoor service area for said licensed premises.

(2) CONDUCT PROHIBITED.

(a) On Public Property. No person shall consume or carry an open container which contains any fermented malt beverage or intoxicating liquor in or upon any public property or public parking lot.

(b) On Private Property. No person shall consume or carry an open container which contains any fermented malt beverage or intoxicating liquor on private property without the owner's consent.

(c) Outside of Licensed Premises. No person who has purchased fermented malt beverages or intoxicating liquor from any licensed premises shall consume or carry an open container which contains said beverages or liquor outside of such premises.

(d) Consumption within Licensed Premises. (Am. Ord. #2809 – 4/24/2018)
No person shall consume, within a license premises, any fermented malt beverage or intoxicating liquor purchased outside of the licensed premises without prior consent of the license holder or its agent.

(3) EXCEPTIONS.

(a) The prohibitions in sub. (2)(a) above shall not apply to community functions or events authorized by specific action of the Council.

(b) The West Bend Park and Recreation Department may authorize individuals to consume fermented beverages or intoxicating liquors within their jurisdiction under ch. 20 of this Code.

(c) (Rep. Ord. #2559 – 4/18/05)

(d) Prohibitions expressed in sub. (2) (a) and (b) above do not apply to individuals transporting unopened fermented malt beverages or intoxicating liquors from a point of purchase to their destination unless it is in violation of §§346.93 and 346.95, Wis. Stats.

9.21 SMOKING PROHIBITED ON CERTAIN PREMISES (Cr. Ord. 1848 – 7/6/87; Am. Ord. #2674 – 5/17/10 – Effective 7/5/10).

(1) ADOPTION OF STATE SMOKING REGULATIONS. §101.123, Wis. Stats., as amended from time to time, is hereby adopted by reference to define offenses against the health, welfare and peace of the City.

(a) With regard to this section and the adopted statutory language, the words “outside” and “outside area” do not include the space within any tent or air supported structure that is 800 square feet in area or greater regardless of the number of walls or sides the tent or air supported structure has.

(b) The person in charge of any restaurant, tavern, private club or retail establishment subject to this Code and the smoking restrictions in §101.123, Wis. Stats., may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern, private club or retail establishment where customers, employees or persons associated with the restaurant, tavern, private club or retail establishment may smoke.

(2) TOBACCO USE PROHIBITED BY OWNER. No person shall, without the permission of the owner or lessee of any public or private property, use tobacco products thereon contrary to a posted sign if such sign is in plain view on the property or at the entrances to the property

(a) Owners and lessees of property may prohibit, restrict or limit smoking on their property in their discretion unless smoking is already prohibited by this section and/or §101.123, Wis. Stats.

(b) The restrictions imposed by this subsection are in addition to the restrictions imposed by sub. (1) above and apply to unenclosed as well as enclosed areas.

(3) USE OF TOBACCO PRODUCTS ON CITY OWNED PROPERTY. (Am Ord. #2677 – 7/19/10). Use of tobacco products is prohibited at the following city owned properties:

(a) Inside and outside of City Hall and the Police Department;

(b) Inside and outside of all Fire Stations;

(c) Inside and outside of West Bend Community Memorial Library;

(d) Inside and outside of the Sewer Utility building;

(e) Inside and outside of the Water Utility / Department of Public Works / Vehicle Maintenance buildings;

(f) Regner Park in the swimming pond and on the sand areas of the swimming beach and the paved areas of the splash pad;

(g) Inside all roofed, permanent structures in City parks;

(h) Inside all City owned vehicles; and

(i) Inside and outside of the West Bend Municipal Airport, including the fixed base operator premises located on Lot 11 of the Airport Lease Lot Map, but not including the individual lease lots and hangers.

(j) Inside and outside of the Mutual Mall Building located at 1043 S. Main Street.

(k) Inside and outside of the Parks Workshop located at 900 N. Main Street and the adjacent paved parking lot located in Regner Park.

(4) DEFINITION. In this section, "use tobacco products" or "use of tobacco products" includes smoking, as defined in §101.123, Wis. Stats., and chewing, carrying in the mouth or consumption of tobacco or a product containing tobacco.

(5) PENALTY. Penalties for violation of this section shall be in accordance with sec. 101.123(8). Statutory court costs and assessments shall be added to all forfeitures for such violations.

9.22 FOUND PROPERTY (Cr. Ord. #1929 – 11/14/88).

(1) When personal property is found in the City and the person finding said property does not know the identity of the owner, the person finding said property shall notify the Police Department and permit the Police Department to take possession thereof.

(2) The Police Department shall attempt to identify and notify the owner of the property and deliver the same to the owner if he appears at the Department offices to take possession.

(3) If the owner cannot be identified or notified within 90 days of the time the Police Department takes possession, possession shall be returned to the person who found the property, except as otherwise provided by §66.0139, Wis. Stats., or other State or Federal law or this Code.

(4) If the person declines to take the property, it may be disposed of in accordance with sec. 3.11 of this Code.

(5) This section shall not be construed to require the Police Department to take possession of, or return to a person, any flammable, explosive, incendiary or otherwise hazardous substance, material or device.

9.23 REGULATION OF ALL-TERRAIN VEHICLES (Cr. Ord. #1872 – 2/15/88). The provisions of §23.33, Wis. Stats., are hereby adopted by reference to define offenses subject to a forfeiture under sec. 25.04 of this Code.

9.235 REGULATION OF BOATING ON THE MILWAUKEE RIVER. (Cr. Ord. #2602 - 12/18/06)

(1) Boats Prohibited Area.

(a) The provisions of this Section shall apply to the waters of the Milwaukee River directly up stream from the Barton Dam as designated by the “Boats Prohibited” buoys installed by the Department of Public Works.

(b) No person shall operate any boat or vessel, as defined in §30.50(2), Wis. Stats., within the boats prohibited area of the Milwaukee River. Boats may be operated outside of the log boom to the opposite side of the Milwaukee River to the designated "take out" point on the north bank of the river.

(c) The requirements of this Section shall be posted by the Department of Public Works at all public access points to the Milwaukee River within the jurisdiction of the City pursuant to the requirements of NR 5.15, Wis. Admin. Code.

(2) State Boating and Safety Laws Adopted. State boating laws as found in §30.50 to 30.71, Wis. Stats., are adopted by reference.

(3) Enforcement. This Section shall be enforced by the City of West Bend and the Wisconsin Department of Natural Resources.

9.24 FRAUDULENT RETURN OF MERCHANDISE

PROHIBITED (Cr. Ord. #1927 – 11/14/88). It is a violation of this chapter, subject to a penalty as set forth in sec. 9.30 of this chapter, for any person to return merchandise to a merchant for the purpose of claiming a cash refund or credit if the person deceives the merchant by doing any of the following:

- (1) Represents that such person purchased the merchandise when the person did not purchase it.
- (2) Represents that the merchandise was purchased from a particular merchant when it was not purchased from that merchant.
- (3) Represents that the merchandise was purchased for a particular price when it was purchased for a lower price.
- (4) Gives the merchant a false name or address.

9.25 SALE AND/OR POSSESSION OF TOBACCO TO/BY

MINORS PROHIBITED. (Cr. Ord. #1960 – 7/10/89). Secs. 254.92 and 134.66, Wis. Stats., are hereby adopted by reference to define offenses against the health and welfare of the City

9.255 SALE, PURCHASE AND POSSESSION OF ELECTRONIC NICOTINE DELIVERY SYSTEM VAPOR PRODUCTS (Cr. Ord. #2808 – 4/24/18).

(1) "Vapor Products" shall mean noncombustible products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or

other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, vaporizers, or similar products or devices. "Vapor products" shall include any vapor cartridge, solution, or other container, that may or may not contain nicotine, that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, vaporizer, or similar products or devices. "Vapor products" do not include any products regulated by the United State Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

(2) **SALE OF ELECTRONIC NICOTINE DELIVERY SYSTEM VAPOR PRODUCTS TO MINORS PROHIBITED.** No person, by himself, his servant or agent, or as the servant or agent of any other person, shall sell, give away, or otherwise dispose of, by vending machine or otherwise, any electronic nicotine delivery system vapor products to any person under the age of eighteen (18) years.

(3) **PUCHASE OR POSESSION OF ELECTRONIC NICOTINE DELIVERY SYSTEM VAPOR PRODUCTS BY PERSON UNDER 18 PROHIBITED.**

(a) No person under 18 years of age may falsely represent his or her age for the purpose of receiving any electronic nicotine delivery system vapor products.

(b) No person under 18 years of age may purchase, attempt to purchase, or possess any electronic nicotine delivery system vapor product except as follows:

1. A person under 18 years of age may purchase or possess electronic nicotine delivery system vapor products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer. The defenses provided in Wis. Stat. § 134.66(3)(a)-(c) shall also be defenses to any prosecution hereunder.

9.26 TRUANCY PROHIBITED (Cr. Ord. #1970 – 10/2/89; Am. Ord. #2320 - 9/14/98). No person under 18 years of age shall be a truant or a habitual truant as defined in §118.163, Wis. Stats. If a person is found to have violated this section, all of the dispositions set forth in that statute are available to the court.

9.27 MISUSE OF E911 SYSTEM PROHIBITED (Cr. Ord. #2061 – 2/24/92)

(1) As used in this section "emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.

(2) Whoever intentionally uses or causes to be used the E911 Emergency Telephone System, knowing that no emergency exists, is subject to a forfeiture of not more than \$200.

9.28 OBTAINING BENEFITS BY FRAUD. (Cr. Ord. #2138 – 1/24/94)

(1) **FRAUD PROHIBITED.** No person shall use a false or fictitious name or address, or knowingly make a false statement or conceal a material fact, or otherwise commit a fraud to obtain a license or permit, to receive any service or accommodation, or to participate in any program issued, provided, or administered by the City of West Bend. Without limitation by enumeration, the failure to disclose a material fact affecting continued eligibility for participation in any program under, or the receipt of any service or accommodation contrary to, this Code or other applicable rules and regulations constitutes commission of a fraud within the meaning of this section.

(2) **PENALTY.** Any person who shall violate this section shall be subject to a forfeiture as provided in sec. 25.04 of this Code, in addition to and not in lieu of any other penalty or sanction imposable under this Code or other applicable rules and regulations.

9.29 PROHIBITION OF GRAFFITI. (Cr. Ord. #2206 – 5/8/95)

(1) **DEFINITIONS.** For the purposes of this section, the following definitions shall apply:

(a) **Broad-tipped indelible marker.** Any felt-tip marker or similar implement which contains a non-water soluble fluid and has a flat or angled writing surface one-half inch or greater in any dimension.

(b) **Child.** See §48.02(2), Wis. Stats.

(c) **Graffiti.** Any writings, drawings, inscriptions, figures or marks of paint, ink, dye, chalk or other similar substances on public or private buildings, structures or places that are not expressly authorized by the property owner or occupant and that are not otherwise permitted by law. For the purposes of this section, graffiti includes any form of writings, drawings, inscriptions, figures or marks, regardless of their content or the nature of materials used in their placement.

(2) **PROHIBITION OF GRAFFITI.** It shall be unlawful for any person to write, draw, inscribe, mark, scratch, scrawl, paint, spray or otherwise place graffiti of any kind on any public or private building, structure or place or on any other real or personal property. This subsection shall not be construed to prohibit the placement of temporary and easily removable chalk or other water soluble markings on public or private streets, sidewalks or other paved surfaces incident to youth activities such as hopscotch and various types of ball games or any lawful business or activity.

(3) **POSSESSION BY CHILD.** It shall be unlawful for any child to have in his or her possession any aerosol or pressurized spray paint container or broad-tipped indelible marker between the hours of 10:00 p.m. and the following 6:00 a.m., while in or on any

public sidewalk, street, right-of-way, park, playground, recreational facility, or other public place, unless accompanied by a parent or legal guardian.

(4) PUBLIC NUISANCE. (Cr. Ord. #2479 – 4/28/03) Graffiti is hereby specifically declared to be a public nuisance, as defined in sec. 10.02 of this Code, affecting peace and safety.

(5) ABATEMENT. (Cr. Ord. #2479 – 4/28/03; Am. Ord. #2484 – 5/19/03) Every owner of a structure or property defaced by graffiti shall comply with the terms of a written Notice To Abate served upon the property owner by the Police Department ordering the removal or covering of such graffiti. The Notice To Abate shall be served personally or by certified mail upon the property owner. If any property owner fails to comply with the Notice To Abate within 72 hours of the Notice being served on the property owner, the Public Works Department may have the graffiti covered or removed and all costs, fees and expenses shall be entered in the tax roll as a special charge, pursuant to sec. 66.0627, Wis. Stats., against the parcel of land on which the property defaced by the graffiti is located.

9.291 SEXTING PROHIBITED (Cr. Ord. #2804 – 1/13/2018)

(1) INTENT. The Common Council of the City of West Bend has determined that the sharing of explicit images and related activities between minors represents a concern for the health, safety, welfare, peace and order to the citizens of the City of West Bend. The Council has further determined that prohibiting sharing of explicit images and related activities between minors will serve to deter such activities within the City.

(2) DEFINITIONS.

(a) “Nudity” means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a noticeably erect state. A mother’s breastfeeding of her baby does not under any circumstance constitute “nudity,” irrespective of whether or not the nipple is covered during or incidental to feeding.

(b) “Harmful to Minors” means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

1. Predominantly appeals to an indecent, shameful, or morbid interest;
2. Is blatantly offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; or
3. Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

(c) “Minor” means any person under the age of 18 years.

(3) A minor commits the offense of sexting if he or she knowingly performs one or more of the following:

(a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity, as defined above, and is harmful to minors, as defined above.

(b) Posses any material described in Paragraph (3)(a), except that a minor does not violate this paragraph if all of the following apply:

1. The minor did not solicit the photograph or video:
2. The minor took reasonable steps to report the photograph or video to a school or law enforcement official; and
3. The minor did not transmit or distribute the photograph or a video to a third party other than a law enforcement official.

(c) Solicits the transmission or distribution of any text, correspondence, message, photograph or video from another minor that would itself be prohibited under this section of the Municipal Code.

9.30 PENALTY (Renum. Ord. #1848 – 7/6/87). Any person who shall violate any provision of this chapter shall be subject to a penalty as provided in sec. 25.04 of this Code. In addition to any penalty imposed for violation of §943.14, Wis. Stats., as adopted by reference in sec. 9.01 of this chapter, any person who shall cause physical damage to or destroy any public property shall be liable for the costs of replacing or repairing such damaged or destroyed property. The parent or parents of any unemancipated minor child who violates said section may also be held liable for the cost of replacing or repairing such damage or destroyed property in accordance with §895.035, Wis. Stats.