

# TITLE 11 Offenses and Nuisances – Village of Gays Mills

## TITLE 11

### Offenses and Nuisances

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## CHAPTER 1

### State Statutes Adopted

11-1-1 Offenses Against State Criminal Laws Subject to Forfeiture

#### SEC. 11-1-1 OFFENSES AGAINST STATE CRIMINAL LAWS SUBJECT TO FORFEITURE.

- (a) **Statutes Adopted.** The statutory provisions in Section 895.035, *Wis. Stats.*, describing and defining parental liability for acts of a minor child and in Chapters 940 through 948, *Wis. Stats.*, inclusive, describing and defining crimes against the State of Wisconsin, excluding Sections 940.01 through 940.15, *Wis. Stats.*, inclusive, and excluding Section 944.21, *Wis. Stats.*, and exclusive of any statutory penalty of a fine or imprisonment or statutory forfeiture are adopted and by reference made a part of this Chapter as if fully set forth herein to define offenses against the Village of Gays Mills. The description of the class of felony or misdemeanor in the incorporated statutes, for purposes of this Chapter, shall be replaced by the words “an Ordinance violation” and the description of the class of statutory forfeiture in the incorporated statutes for purposes of this Chapter shall be replaced by the words “is guilty of an Ordinance violation.” Except as otherwise provided in Subsection (d) of this Section, 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, plus any and all applicable assessments, surcharges, fees, and/or costs. The incorporated statutes shall be designated as part of this Code by adding the prefix “11-1-” to each statute section number. Any act prohibited by any statute incorporated herein by reference is prohibited by this Chapter. Any existing or future amendments, revisions or modifications of the statutes incorporated herein by reference are intended to be made part of this Code. Any person who shall within the Village of Gays Mills, Wisconsin, violate any provision of any statute incorporated herein by reference shall be deemed to have violated this Section.
- (b) **Definitions.** Unless the context of a specific section of a statute incorporated manifestly requires a different construction or the word or phrase is defined in Section 948.01, *Wis. Stats.*, for purposes of Chapter 948, *Wis. Stats.*, the definitions contained in Section 939.22, *Wis. Stats.*, shall apply in this Chapter. The definitions contained in Sections 939.23, 939.24, and 939.25, *Wis. Stats.*, shall also apply in this Chapter.
- (c) **Defenses.** The defenses to criminal liability contained in Sections 939.42 through 939.49, *Wis. Stats.*,

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inclusive, shall apply in actions under this Chapter.

- (d) **Additional 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, restitution may be awarded if allowed by the statutes incorporated in Section 11-1-1 of this Code of Ordinances and 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. 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.
- (e) **Attempt.**
  - (1) Whoever attempts to commit an act prohibited by this Chapter may be required to forfeit amounts not to exceed one-half ( $\frac{1}{2}$ ) the maximum penalty for the completed act.
  - (2) An attempt to commit an act prohibited by this Chapter requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute a violation of this Chapter 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.
- (f) **Parties to Violations of this Chapter.**
  - (1) Whoever is concerned in the commission of an act prohibited by this Chapter is a principal 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 found guilty or has been found guilty of some other offense prohibited by these Ordinances based on the same act.
  - (2) A person is concerned in the commission of an act prohibited by this Chapter 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 allow the others also to withdraw.
- (g) **Solicitation.** Whoever with intent that a violation of this Chapter be committed advises another to commit that violation under circumstances that indicate unequivocally that he/she has the intent is a principal and may be charged with the violation.
- (h) **Conspiracy.** Whoever with intent that a violation of this Chapter be committed agrees or combines with another for the purpose of committing that violation may, if one or more parties to the conspiracy does an act to effect its object, be assessed any and all penalties for the completed violation.

State Law Reference: Secs. 61.34(1) and 66.051, and Chs. 939 through 948, *Wis. Stats.*

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## CHAPTER 2

### Offenses Against Public Safety, Peace, and Health

11-2-1	Regulation of Firearms, Explosives, and Other Missiles
11-2-2	Weapons in Public Establishments
11-2-3	Safe Use and Transportation of Firearms and Bows
11-2-4	Certain Activities on Streets and Sidewalks Prohibited
11-2-5	Loitering Prohibited
11-2-6	Loud and Unnecessary Noise Prohibited
11-2-7	Possession of Marijuana
11-2-8	Open Cisterns, Wells, Basements or Other Dangerous Excavations Prohibited
11-2-9	Abandoned Refrigerators Prohibited
11-2-10	Regulation of Smoking

#### SEC. 11-2-1 REGULATION OF FIREARMS, EXPLOSIVES, AND OTHER MISSILES.

- (a) **Repealed 2011-07**
- (b) **Hunting Prohibited in Restricted Areas.** Hunting within the Village of Gays Mills is prohibited in areas zoned residential, business, industrial, and conservancy II. Hunting within the Village of Gays Mills is allowed in areas zoned conservancy I and agricultural except for the restricted area north of the platted portion of the Village between West Point Road and Highway 131 where only hunting with a shotgun is allowed.
- (c) **Shooting Into Restricted Areas of Village.** No person shall in the territory adjacent to the Village discharge any firearm in such manner that the discharge shall enter or fall within areas in which discharge of a firearm is prohibited in the Village of Gays Mills under this Section.
- (d) **Shooting Ranges.** This Section shall not prevent the maintenance and use of duly supervised rifle or pistol ranges or shooting galleries approved by the Village Board, upon the recommendation of the Chief of Police, where proper safety precautions are taken.
- (e) **Explosive Devices.** No person shall discharge or detonate any dynamite, nitroglycerin or other explosive within the Village without first obtaining a permit to do so from the Village Board.
- (f) **Throwing or Shooting of Arrows, Stones, or Other Missiles Prohibited.**
  - (1) It shall be unlawful for any person to discharge or cause the discharge of any dangerous missile from any slingshot, bow and arrow or other means within three hundred (300) feet of any inhabited dwelling or building or any public park, square or enclosure.
  - (2) This Subsection shall not apply:
    - a. To the shooting or discharging of toy arrows or arrows which have a tip made of rubber or similar material.
    - b. To a supervised archery range approved by the Village Board.
    - c. Within the interior of a single family dwelling.
- (g) **Requirements for Annual Archery Permit (Conservancy I and Non-Agricultural Properties).**
  - (1) An annual archery permit for practice bow and arrow shooting is required for such activity within the Village on conservancy I and non-agricultural properties and may be obtained from the Chief of Police. Permits shall expire on June 30th. There is no fee for such permit.

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- (2) Archers under the age of eighteen (18) years old must be certified by a Hunter's Safety Course or other recognized safety training program to qualify for a permit and supervised by an adult permit holder when shooting.
  - (3) All shooting will be directed towards an approved structure on the permit holder's property, and there shall be no shooting towards adjacent property unless there is a minimum of two hundred fifty (250) yards down-range, without structures.
  - (4) Contiguous property dwellers will be contacted and advised of the applicant's intention to obtain a permit for archery practice on the applicant's property.
- (h) **Definitions.** For purposes of this Section, a firearm is defined as any instrumentality from or with which a shot, bullet or pellet may be discharged or expelled, regardless of whether the propelling force is provided by air, spring or other similar mechanical device, or gun powder.

### 11-2-2 WEAPONS IN PUBLIC BUILDINGS AND AT SPECIAL EVENTS

- (a) **Definitions.** The following definitions shall apply to the terms used in this ordinance:
- (1) "Public building" shall mean any building owned, occupied or controlled by the Village of Gays Mills.
  - (2) "Special event" means an event that is open to the public, is organized by the Village of Gays Mills, is for a duration of not more than 3 weeks, and either has designated entrances to and from the event that are locked when the event is closed or requires an admission.
  - (3) "Weapon" means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any electric weapon, as defined in Wis. Stat. sec. 941.295(1c)(a); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm including any knife with a blade length of greater than three (3) inches.
- (b) **Prohibitions.** Other than as provided in sub. (d), it shall be unlawful for any person:
- (1) While carrying a weapon, to enter or remain at a special event organized by the Village if the Village has notified the actor not to enter or remain at the special event while carrying a weapon.
  - (2) To enter or remain in any part of a public building, if the Village has notified the actor not to enter or remain in the building while carrying a weapon.
- (c) **Notice and Signs.**
- (1) For the purposes of this section, the Village has notified an individual not to enter or remain in a part of the public building while carrying a weapon if the Village has posted a sign that is located in a prominent place near all of the entrances to the public building and any individual entering the building can be reasonably expected to see the sign.
  - (2) For the purposes of this section, the Village has notified an individual not to enter or remain at the special event organized by the Village while carrying a weapon if the Village has posted a sign that is located in a prominent place near all of the entrances to the special event and any individual attending the special event can be reasonably expected to see the sign.

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- (3) Signs shall be not less than five inches by seven inches in size and shall state that weapons are prohibited in the building or at the special event.
- (d) Exceptions. The prohibitions in sub. (b) do not apply to the following:
  - (1) A law enforcement officer as defined under Wis. Stat. sec. 175.49(1)(g); or
  - (2) A peace officer other than a commission warden who is not a state-certified commission warden; or
  - (3) A person engaged in food preparation or other activity (e.g., Civil War reenactment, dramatic production) authorized by the Board if the weapon (such as a knife) is a reasonably necessary tool or prop for the person engaged in such food preparation or other activity authorized by the Board.
  - (4) To a person who leases residential or business premises in a public building or, if the weapon is in a vehicle driven or parked in a parking facility, to any part of the building used as a parking facility.
  - (5) To a person attending a special event, if the weapon is in a vehicle driven or parked in a parking facility, to any part of the special event grounds or building used as a parking facility.
  - (6) To a person who rents all or part of a public building for the purpose of holding an auction or estate sale and who is auctioning or selling the personal property of a household or decedent, provided that any weapon or firearm sold is removed from the premises promptly after sale and, in the case of any firearm, said firearm is at all times unloaded.
  - (7) To a person holding a raffle that includes raffling weapons and/or firearms, provided that any weapon or firearm raffled is removed from the premises promptly after the raffle and, in the case of any firearm, said firearm is at all times unloaded.
  - (8) To any person teaching or participating in an approved hunter safety class.
- (e) Penalty Provision. Any person who violates this section shall be subject to a forfeiture of not less than \$25.00 nor more than \$250.00. The bond amount shall be \$50.00.

### 11-2-3 Repealed 2011-07

#### SEC. 11-2-4 CERTAIN ACTIVITIES ON STREETS AND SIDEWALKS PROHIBITED.

- (a) **Prohibited Activities on Streets and Sidewalks.** No person shall loiter, cause a nuisance or engage in any sport or exercise on any public street, sidewalk, bridge or public ground within the Village of Gays Mills 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.

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- (b) **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 Village of Gays Mills.
  - (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 Village. The term shall not include sidewalks or walkways on private property in shopping centers, apartment complexes, office building sites or any other private property.
- (c) **Free Speech.** This Section shall not be interpreted as prohibiting any person from stopping on any sidewalk to exercise his/her constitutionally protected right of free speech, provided that such person shall not stand in such a location to make it 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. 11-2-5 LOITERING PROHIBITED.

- (a) **Loitering or Prowling Prohibited.** No person shall loiter or prowl in a place, at a time or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person takes flight upon appearance of a police or peace officer, refuses to identify himself/herself or manifestly endeavors to conceal himself/herself or an 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 officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the person was true and, if believed by the law enforcement officer at the time, would have dispelled the alarm.
- (b) **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 are the following: 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) **Place Open to the Public** is an area generally visible to public view and includes streets,

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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 one (1) year previous to the date of arrest for violation of this Section, had, within the knowledge of the law enforcement officer, been convicted in any municipal court or circuit court in the State of Wisconsin of an offense involving prostitution.

State Law Reference: *City of Milwaukee v. Nelson*, 149 Wis.2d 434, 439 N.W.2d 562 (1989);  
*City of Milwaukee v. Wilson*, 96 Wis.2d 11, 291 N.W.2d 452 (1980).

### SEC. 11-2-6 LOUD AND UNNECESSARY NOISE PROHIBITED.

It shall be unlawful for any person to make, continue or cause to be made or continued any noise that tends to unreasonably disturb the peace and quiet of the neighborhood in which it occurs unless the making and continuing of the noise cannot be prevented and is necessary for the protection or preservation of property or of the health, safety, life, or limb of some person. Such noise is hereby declared to be a public nuisance.

State Law Reference: *City of Madison v. Baumann*, 162 Wis.2d 660, 470 N.W.2d 296 (1991).

### SEC. 11-2-7 POSSESSION OF MARIJUANA.

- (a) **Possession of Marijuana.** No person shall possess twenty-five (25) grams or less of marijuana, as defined in Section 961.01(14), *Wis. Stats.*, unless it was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by Chapter 961, *Wis. Stats.* This Section does not apply to any person who is charged with possession of more than twenty-five (25) grams of marijuana, or who is charged with possession of any amount of marijuana following a conviction for possession of any amount of marijuana in the State of Wisconsin.
- (b) **Practitioner Definition.** For the purposes of this Section, “practitioner” means:
- (1) A physician, dentist, veterinarian, podiatrist, optometrist, scientific investigator or other person licensed, registered, certified, or otherwise permitted to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in the State of Wisconsin.
  - (2) A pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in the State of Wisconsin.

State Law Reference: Secs. 66.051(1)(bm), 961.01(14) and (19), and 961.41(3g)(intro), *Wis. Stats.*

### SEC. 11-2-8 OPEN CISTERNS, WELLS, BASEMENTS OR OTHER DANGEROUS EXCAVATIONS PROHIBITED.

No person shall have or permit on any premises owned or occupied by him/her any open cisterns, cesspools, wells, unused basements, excavations or other dangerous openings. All such places shall be filled, securely

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

### **SEC. 11-2-9 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 the same is displayed for sale on the premises of the owner or his/her agent and is securely locked or fastened.

### **SEC. 11-2-10 REGULATION OF SMOKING.**

The provisions of Section 101.123, *Wis. Stats.*, entitled 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 if fully set forth herein. Any act required to be performed or prohibited by such statute is required or prohibited by this Section. Any existing or future amendments, revisions or modifications of such statute is intended to be made a part of this Section.

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## CHAPTER 3

### Offenses Against Property

- 11-3-1 Littering Prohibited
- 11-3-2 Additional Provisions Regarding Graffiti
- 11-3-3 Cemetery Regulations

#### SEC. 11-3-1 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 Village of Gays Mills, or any private person, or upon the surface of any body of water within the Village.
- (b) **Litter From Conduct of Commercial Enterprise.**
  - (1) Scope. The provisions of this Subsection shall apply to all sales, promotions and other commercial ventures that result in litter being deposited on any street, alley or other public way.
  - (2) Litter to be cleaned up. Any person, firm, corporation, association, or other entity 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, or 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, association, or other entity fails to pick up any litter as required by this Subsection (b) within the time specified, the Village may arrange to have the same picked up by Village crews or by private enterprise. The entire expense of picking up such litter, together with an additional charge of twenty percent (20%) for administrative expenses, shall be charged to the person, firm, corporation, association or other entity that did the littering and shall be in addition to any forfeiture or other penalty for violation of this Section. If such sum is not promptly paid, steps may be taken, with the advice of the Village Attorney's office, to collect the same.
- (c) **Depositing of Materials Prohibited.** It shall be unlawful for any person to deposit, cause or permit to be deposited, placed or parked any vegetation, grass, leaves, foliage, earth, sand, gravel, water, snow, ice, debris, waste material, foreign substance, construction materials, equipment or object upon any street, sidewalk or public property without authorization of the Village Board or Director of Public Works pursuant 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.** It shall be unlawful to deliver any handbills or advertising material to any premises in the Village except by being handed to the recipient, placed on the porch, stoop or entrance way of the building or firmly affixed to a building or left inside the building with the consent of the owner or occupant of the building so as to prevent any such articles from being blown about, becoming scattered or in any way causing litter. It shall be unlawful to leave any handbills or advertising material unattended in any street, alley, or sidewalk other than for purposes of garbage pickup if secured so as to prevent the same from becoming scattered or in any way causing litter.

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### SEC. 11-3-2 ADDITIONAL PROVISIONS REGARDING GRAFFITI.

- (a) **Public Nuisance.** Graffiti in violation of Sections 943.012 and 943.017, *Wis. Stats.*, which have been incorporated in this Title 11 by virtue of Section 11-1-1, *supra*, is hereby declared to be a public nuisance, as defined under Title 11, Chapter 6 of this Code, affecting peace and safety. In addition, no owner of property shall mark, draw or write with paint, ink or another substance on the walls, windows, doors or other structures on property he or she owns, or on any vehicle, camper or boat parked on said property, or permit the same to be done, unless the owner complies with Section 11-3-2(c)(1), below. For purposes of this section, any such markings, drawings or writings, whether affixed to one's own property or the property of another, is graffiti.
- (b) **Additional Liability.** Any person who shall unlawfully affix graffiti to any property shall be liable for the costs of removing or covering such graffiti in addition to any other penalties. 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 Section 895.035, *Wis. Stats.*
- (c) **Removal By Property Owner.**
  - (1) Every owner of a structure or property defaced by graffiti shall cover or remove the graffiti within twenty-four (24) hours after the graffiti is affixed.
  - (2) In the event any owner fails to remove the graffiti within the twenty-four (24) hour period, the Police Department shall provide written notice to the owner of the property of the requirements of this Section. If, after notice is given by the Police Department to remove or cover such graffiti, the property owner fails to cover or remove the graffiti for a period of seven (7) calendar days, the Police Department may have the graffiti covered or removed, and in such event, all costs, fees and expenses may be assessed to said owner as a special charge pursuant to Section 66.0627, *Wis. Stats.* If the property owner, despite making reasonable efforts to comply with this ordinance within the time limits set forth above, is unable to remove or cover the graffiti due to inability to locate a contractor or other, similar reason outside the property owner's control, the property owner may apply to the Village Board for a one-time extension not to exceed an additional seven (7) calendar days to comply with the ordinance.

### SEC. 11-3-3 CEMETERY REGULATIONS.

- (a) **Purpose, Supplementary Nature, and Definition.** In order to protect cemetery areas within the Village from injury, damage or desecration, these regulations are enacted. These regulations supplement the provisions of Section 943.012, *Wis. Stats.*, which have been incorporated in this Title 11 by virtue of Section 11-1-1, *supra*. The term "cemetery" as hereinafter used in this Section shall include all cemetery property, grounds, equipment and structures, both privately and publicly owned, which are located within the Village of Gays Mills.
- (b) **Specific Rules and Regulations.** The following rules and regulations are adopted for the Gays Mills Cemetery:
  - (1) Trees and Plants. Trees, bushes, and planted flowers are prohibited except those maintained or planted by the authorized caretaker of the cemetery.
  - (2) Flowers. Flowers and other memorials placed in the ground will be removed at the caretaker's discretion. It is suggested to keep items six (6) inches above ground to allow for the trimming of grass.
  - (3) Breakage. The Village is not responsible for urn or pot breakage.
  - (4) Enclosures. No fences, hedges, or enclosures shall be permitted on or around lots.
  - (5) Removal. Items placed in violation of these rules and regulations may be removed and/or

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- destroyed without notice by the Village.
- (6) Lot Prices. Three Hundred Dollar (\$300.00) fee per lot, which includes a One Hundred Dollar (\$100.00) perpetual care fee.
  - (7) Grave Opening Fee. Four Hundred Dollar (\$400.00) fee.
  - (8) Baby or Cremation burials. Seventy Dollar (\$70.00) fee.
  - (9) Receptacle. Casket and burial receptacle is required and shall be placed in an east/west direction.
  - (10) Vault. Vaults shall be a minimum of two feet (2') below ground level.
  - (11) Markers. A marker shall have a base at least four inches (4") deep with a minimum four inch (4") border surrounding marker.
  - (12) Sale. Lots will be sold only to residents or former residents or their descendants.
  - (13) Alcohol. No person shall be in possession of any alcohol in the cemetery and any alcohol found on cemetery grounds shall be confiscated and destroyed.
  - (14) Clean-Up. Between April 15<sup>th</sup> and April 30<sup>th</sup> of each year, all flowers and memorials shall be removed for cemetery clean-up. All items wished to be kept must be removed before this date and can be replaced back on May 1<sup>st</sup>.
  - (15) Pets. No pets are allowed in the cemetery.
- (c) **Penalties.** Whoever violates any provision of this Section may be required to forfeit no less than Twenty-Five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00) for a first offense, and no less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00) for each subsequent offense, together with any and all applicable surcharges, assessments, and other costs, and in default of such payment shall be imprisoned in the county jail until such payment is made but not exceeding ninety (90) days. In addition to such forfeiture or in lieu of such forfeiture, the Village may remove from the cemetery any property placed in violation of the rules and regulations for the cemetery.

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## CHAPTER 4

### Offenses by Juveniles

11-4-1	Village Jurisdiction Over Juveniles and Procedure
11-4-2	Curfew
11-4-3	Possession, Manufacture and Delivery of Drug Paraphernalia by a Minor Prohibited
11-4-4	Alcohol Beverages
11-4-5	Habitual Truancy, Truancy, and Dropouts
11-4-6	Purchase or Possession of Tobacco Products
11-4-7	Penalties

#### SEC. 11-4-1 VILLAGE JURISDICTION OVER JUVENILES AND PROCEDURE.

- (a) **Adoption of State Statutes.** Section 938.17(2), *Wis. Stats.*, concerning jurisdiction over juveniles in ordinance violation cases is hereby adopted and by reference made a part of this Section as if fully set forth herein. The definitions contained in Section 938.02, *Wis. Stats.*, shall be used to the extent that they apply to such incorporated statute.
- (b) **Definition of Adult and Juvenile.**
- (1) Adult means a person who is eighteen (18) years of age or older, except that for purposes of prosecuting a person who is alleged to have violated any civil law or municipal ordinance, adult means a person who has attained seventeen (17) years of age.
  - (2) Juvenile means a person who is less than eighteen (18) years of age, except that for purposes of prosecuting a person who is alleged to have violated a civil law or municipal ordinance, juvenile does not include a person who has attained seventeen (17) years of age.
- (c) **Provisions of Ordinance Applicable to Juveniles.** Subject to the provisions and limitations of Sections 938.17(2), 938.19, and 938.237, *Wis. Stats.*, and other State statutes, and also subject to express contrary provisions in other Sections of this Title, complaints alleging a violation of any provision of this Code of Ordinances against juveniles may be brought on behalf of the Village of Gays Mills and may be prosecuted utilizing the same procedures in such cases as are applicable to adults charged with the same offense.

State Law Reference: Sec. 938.237, *Wis. Stats.*

#### SEC. 11-4-2 CURFEW.

- (a) **Curfew Established.** It shall be unlawful for any juvenile under age sixteen (16) to be on foot, bicycle or in any type of vehicle on any public street, avenue, highway, road, alley, park, place of amusement and entertainment, cemetery, playground, public building or any other public place in the Village of Gays Mills between the hours of 10:00 p.m. to 5:00 a.m. unless accompanied by his or her parent, legal guardian, or person having lawful custody and control of his or her person, or unless there exists a reasonable necessity therefor. The fact that said juvenile, unaccompanied by parent, legal guardian or other person having legal custody is found upon any such public place during the aforementioned hours

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shall be prima facie evidence that said juvenile is there unlawfully and that no reasonable excuse exists therefor.

(b) **Exceptions.**

(1) This Section shall not apply to a juvenile:

- a. Who is performing an errand as directed by his/her parent, guardian or person having lawful custody.
- b. Who is on his/her own premises or in the areas immediately adjacent thereto.
- c. Whose employment makes it necessary to be upon the streets, alleys or public places or in any motor vehicle during such hours.
- d. Who is returning home from a supervised school, church or civic function, but not later than sixty (60) minutes after the ending of such function.

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

(c) **Parental Responsibility.** It shall be unlawful for any parent, guardian or other person having the lawful care, custody and control of any person under age seventeen (17) to allow or permit, including by inefficient control, such person to violate the provisions of this Section. The fact that prior to the present offense a parent, legal guardian or custodian was informed by any law enforcement officer of a separate violation of this Section occurring within thirty (30) days of the present offense shall be prima facie evidence that such parent, guardian or custodian allowed or permitted the present violation. Any parent, legal guardian or custodian herein who shall have made a missing person notification to the Police Department shall not be considered to have allowed or permitted any juvenile under age seventeen (17) to violate this Section.

(d) **Detaining a Juvenile.** The terms and provisions of Chapter 938, Subchapter IV, *Wis. Stats.*, shall govern the taking and holding of a juvenile in custody under this Section.

(e) **Penalty.** Any parent, legal guardian, or person having the lawful care, custody, and control of a juvenile under age seventeen (17) and who violates this Section shall be subject to a penalty as provided in Section 1-1-6 of this Code of Ordinances. After a second violation within a six (6) month period, if such adult defendant, in a prosecution under this Section, proves that he or she is unable to comply with this Section because of the disobedience of the juvenile, the action shall be dismissed and the juvenile shall be referred to the proper authorities under Chapter 938, *Wis. Stats.* Any juvenile who shall violate this Section shall, upon conviction thereof, forfeit not less than Five Dollars (\$5.00) nor more than Twenty-five Dollars (\$25.00), plus any and all applicable costs, surcharges, fees, and assessments and may be referred to the proper authorities under Chapter 938, *Wis. Stats.*

State Law Reference: *City of Milwaukee v. K. F.*, 145 Wis.2d 24, 426 N.W.2d 329 (1988).

### SEC. 11-4-3 POSSESSION, MANUFACTURE AND DELIVERY OF DRUG PARAPHERNALIA BY A MINOR PROHIBITED.

(a) **Definitions.** In this Section, “primarily” means chiefly or mainly and “drug paraphernalia” means all equipment, products, and materials of any kind which are used, primarily intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance or controlled substance analog, as defined in Chapter 961, *Wis. Stats.*, in violation of this Section, but excludes hypodermic syringes, needles, and other objects used or intended for use in parenterally injecting substances into the human body and any items, including pipes, paper, and

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accessories, that are designed for use or primarily intended for use with tobacco products. Drug paraphernalia includes, but is not limited to, any of the following:

- (1) Kits used, primarily intended for use, or designed for use, in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance or controlled substance analog can be derived.
  - (2) Kits used, primarily intended for use, or designed for use, in manufacturing, compounding, converting, producing, processing, or preparing controlled substances or controlled substance analogs.
  - (3) Isomerization devices used, primarily intended for use, or designed for use, in increasing the potency of any species of plant which is a controlled substance.
  - (4) Testing equipment used, primarily intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances or controlled substance analogs.
  - (5) Scales and balances used, primarily intended for use, or designed for use, in weighing or measuring controlled substances or controlled substance analogs.
  - (6) Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose and lactose, used, primarily intended for use, or designed for use in cutting controlled substances or controlled substance analogs.
  - (7) Separation gins and sifters used, primarily intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana as defined in Section 961.01(14), *Wis. Stats.*
  - (8) Blenders, bowls, containers, spoons and mixing devices used, primarily intended for use, or designed for use, in compounding controlled substances or controlled substance analogs.
  - (9) Capsules, balloons, envelopes, or other containers used, primarily intended for use, or designed for use, in packaging small quantities of controlled substances or controlled substance analogs.
  - (10) Containers and other objects used, primarily intended for use, or designed for use in storing or concealing controlled substances or controlled substance analogs.
  - (11) Objects used, primarily intended for use, or designed for use, in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil, into the human body, including but not limited to:
    - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.
    - b. Water pipes.
    - c. Carburetion tubes and devices.
    - d. Smoking and carburetion masks.
    - e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.
    - f. Miniature cocaine spoons and cocaine vials.
    - g. Chamber pipes.
    - h. Carburetor pipes.
    - i. Electric pipes.
    - j. Air-driven pipes.
    - k. Chillums.
    - l. Bongs.
    - m. Ice pipes or chillers.
- (b) **Determinations.** In determining under this Section whether an item is designed for a particular use, a Court or other authority shall consider the objective physical characteristics and design features of the item. In determining under this Section whether an item is primarily intended for a particular use, a Court or other authority shall consider the subjective intent of the defendant. In determining under this

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Section whether an object is drug paraphernalia, a Court or other authority shall consider, in addition to all other legally relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use.
  - (2) The proximity of the object in time and space to a direct violation of this Section.
  - (3) The proximity of the object to controlled substances or controlled substance analogs.
  - (4) The existence of any residue of controlled substances or controlled substance analogs on the object.
  - (5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom the person knows intend to use the object to facilitate a violation of this Section. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this Section, shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.
  - (6) Oral or written instructions provided with the object concerning its use.
  - (7) Descriptive materials accompanying the object which explain or depict its use.
  - (8) Local advertising concerning its use.
  - (9) The manner in which the object is displayed for sale.
  - (10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of tobacco products.
  - (11) The existence and scope of legitimate uses for the object in the community.
  - (12) Expert testimony concerning its use.
- (c) **Prohibited Uses and Disposition.**
- (1) Possession of Drug Paraphernalia. Any person under seventeen (17) years of age who may use, or possess with the primary intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog violates this Section and is subject to a disposition under Section 938.344(2)(e), *Wis. Stats.*
  - (2) Manufacture or Delivery of Drug Paraphernalia. Any person under seventeen (17) years of age who may deliver, or possess with intent to deliver, drug paraphernalia, knowing that it will be primarily used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog violates this Section and is subject to a disposition under Section 938.344(2)(e), *Wis. Stats.*
  - (3) Delivery of Drug Paraphernalia by a Minor to Minor. Any person under seventeen (17) years of age who violates Subsection (c)(2) of this Section by delivering drug paraphernalia to a person under seventeen (17) years of age who is at least three (3) years younger than the violator, violates this Section and is subject to a disposition under Section 938.344(2)(e), *Wis. Stats.*
  - (4) Exemption. This Section does not apply to any persons whose conduct is in accordance with Chapter 961, *Wis. Stats.*
- (d) **Citation Procedure.** The citation procedure established by Section 778.25(1), *Wis. Stats.*, may be used in an action to recover a forfeiture only for violation of this Section.

State Law Reference: Secs. 961.01, 961.571, 961.572, 961.573, 961.574, 961.575, and 961.577,  
*Wis. Stats.*

### SEC. 11-4-4 ALCOHOL BEVERAGES.

The provisions of Section 125.07(3) and (4), of the Wisconsin Statutes, relating to underage persons and alcohol beverages, including the penalties to be imposed, are hereby adopted by reference and made a part of

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this Section as if fully set forth herein. Any act required to be performed or prohibited by such statute incorporated herein by reference is required or prohibited by this Section. Any future amendments, revisions or modifications of the statute incorporated herein are intended to be made a part of this Section in order to secure uniform statewide regulation. The definitions contained in Section 125.02, *Wis. Stats.*, shall be used to the extent they may apply to such incorporated statute. Forfeitures for violation of the contents of Section 125.07(4), *Wis. Stats.*, shall be governed by Sections 125.07(4) and 938.344, *Wis. Stats.*

### SEC. 11-4-5 HABITUAL TRUANCY, TRUANCY, AND DROPOUTS.

- (a) **Definitions.** For the purpose of this Section, the following definitions shall be applicable:
- (1) Acceptable excuse shall mean an acceptable excuse under Sections 118.15 and 118.16(4), *Wis. Stats.*
  - (2) Dropout shall mean a child who ceased to attend school, does not attend a public or private school, technical college or home-based private educational program on a full-time basis, has not graduated from high school and does not have an acceptable excuse under Section 118.15(1)(b) to (d) or (3), *Wis. Stats.*
  - (3) Habitual truant shall mean a pupil who is absent from school without an acceptable excuse for part or all of five (5) or more days on which school is held during a school semester.
  - (4) Truant shall mean a pupil who is absent from school without an acceptable excuse for part or all of any days on which school is held during a school semester.
  - (5) School attendance officer shall mean an employee designated by the school board to deal with matters relating to school attendance and truancy. School attendance officer does not include an individual designated under Section 118.16(2m)(a), *Wis. Stats.*, to take into custody a child who is absent from school without an acceptable excuse under Section 118.15, *Wis. Stats.*, unless that individual has also been designated by the school board to deal with matters relating to school attendance and truancy.
- (b) **Prohibition Against Habitual Truant.** Any person at least six (6) years of age and under eighteen (18) years of age, subject to the exceptions found under Section 118.15, *Wis. Stats.*, is prohibited from becoming a habitual truant. Any police officer in this Village is authorized to issue a citation to any such person who is determined to be a habitual truant under the terms of this Section.
- (c) **Precondition to Issuance of Citation on Habitual Truant.** Prior to the issuance of any citation on an alleged habitual truant, the school attendance officer shall provide evidence to the Police Department that appropriate school personnel in the school in which the juvenile is enrolled have within the school year during which the truancy occurred, done all of the following, provided, however, that Subsection (1) does not apply if a meeting under Section 118.16(2)(cg), *Wis. Stats.*, is not held within ten (10) school days after the date that the notice under Section 118.16(2)(cg), *Wis. Stats.*, is sent and that Subsections (2), (3), and (4) do not apply if the school attendance officer provides evidence that appropriate school personnel were unable to carry out the activity due to the child's absences from school:
- (1) Met with the child's parent or guardian to discuss the child's truancy or attempted to meet with the child's parents or guardian and received no response or were refused;
  - (2) Provided an opportunity for educational counseling to the child to determine whether a change in the child's curriculum would resolve the child's truancy and have considered curriculum modifications under Section 118.15(1)(d), *Wis. Stats.*;
  - (3) Evaluated the child to determine whether learning problems may be a cause of the child's truancy

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- and, if so, taken steps to overcome the learning problems, except that the child need not be evaluated if tests administered to the child within the previous year indicate that the child is performing at his or her grade level;
- (4) Conducted an evaluation to determine whether social problems may be a cause of the juvenile's truancy and, if so, have taken appropriate action or made appropriate referrals.
- (d) **Disposition Order on Habitual Truants.** Upon a finding the juvenile is habitually truant, the following dispositions are available to the Court:
- (1) Suspension of Operating Privileges. Suspend the juvenile's operating privileges for not less than thirty (30) days nor more than one (1) year. The judge shall immediately take possession of the suspended license and forward it to the Department of Transportation of the State of Wisconsin, together with a notice setting forth the reason for and duration of the suspension.
  - (2) Counseling, Service or Work Program. Order the juvenile to participate in counseling, community service work or a supervised work program as described in Section 938.34(5g), *Wis. Stats.* The costs of any such counseling, supervised work program, or other community service work may be assessed against the juvenile, the parents or guardian of the juvenile, or both. Any county department of human services or social services, community agency, public agency or nonprofit charitable organization administering a supervised work program or other community service work to which a juvenile is assigned pursuant to an order under this paragraph acting in good faith has immunity from any civil liability in excess of twenty-five thousand dollars (\$25,000.00) for any act or omission by or impacting on that juvenile.
  - (3) In-House Restraint. Order the juvenile to remain at home except for the hours in which the juvenile is attending religious worship or a school program including travel time required to get to and from the school program or place of worship. The order may permit a juvenile to leave home if the juvenile is accompanied by a parent or legal guardian.
  - (4) Educational Programs. Order the juvenile to attend an educational program as described in Section 938.34(7d), *Wis. Stats.*
  - (5) Revocation of Work Permits. Order the Department of Workforce Development, formerly the Department of Industry, Labor and Human Relations (DILHR), to revoke, under Section 103.72, *Wis. Stats.*, a permit under Section 103.70, *Wis. Stats.*, authorizing the employment of the juvenile.
  - (6) Teen Court Program. Order the juvenile to be placed in a teen court program if all of the following conditions apply:
    - a. The chief judge of the judicial administrative district has approved a teen court program established in juvenile's county of residence and the judge determines that participation in the court program will likely benefit the juvenile and the community.
    - b. The juvenile admits or pleads no contest to the allegations that the juvenile is a habitual truant in open court with the juvenile's parent, guardian or legal custodian present; and
    - c. The juvenile has not successfully completed participation in a teen court program during the two (2) years before the date of the alleged violation.
  - (7) Order the juvenile to attend school.
  - (8) Order a forfeiture of not more than five hundred dollars (\$500.00) plus any and all applicable costs, assessments, and fees, subject to Section 938.37, *Wis. Stats.* All or part of the forfeiture plus any and all applicable costs, assessments, and fees, may be assessed against the juvenile, the parents or guardian of the juvenile, or both.
  - (9) Order any other reasonable conditions consistent with this Subsection, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults.
  - (10) Order placing of the juvenile under formal or informal supervision, as described in Section 938.34(2), *Wis. Stats.*, for up to one (1) year.

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- (11) Order the juvenile's parent, guardian or legal custodian to participate in counseling at the parent's, guardian's or legal custodian's own expense or to attend school with the person, or both.
- (e) **Prohibition on Truancy and Disposition Order.** Any person under eighteen (18) years of age violates this Section by being a truant. The Court may order the person to attend school and/or order a forfeiture of not more than fifty dollars (\$50.00) for a first violation and one hundred dollars (\$100.00) for any second or subsequent violation committed within twelve (12) months of a previous violation, plus any and all applicable costs, assessments and fees, subject to Section 938.37, *Wis. Stats.*, and subject to a maximum cumulative forfeiture amount of not more than five hundred dollars (\$500.00) for all violations committed during a school semester. All or part of the forfeiture, plus any and all applicable costs, assessments, and fees, may be assessed against the person, the parents or guardian of the person, or both.
- (f) **Prohibition on Dropouts and Disposition Order.** Any person who is at least sixteen (16) years of age but less than eighteen (18) years of age violates this Section by being a dropout. The Court may suspend a dropout's operating privilege, as defined in Section 340.01(40), *Wis. Stats.*, until the person reaches the age of eighteen (18). The Court shall immediately take possession of any suspended license and forward it to the Department of Transportation of the State of Wisconsin together with a notice stating the reason for and the duration of the suspension. No forfeiture shall be awarded for a violation of this Subsection.
- (g) **Form of Citation.** Any citation issued for a violation of this Section shall be returnable in Court in the same manner as all other ordinance citations are returnable. The citation is to state on its face that this is a "must appear" citation and no forfeiture amount is to be written on the face of the citation if it is for a violation of Subsection (f) of this Section.
- (h) **Juveniles under Seventeen.** A juvenile who is under seventeen (17) years of age on the date of disposition is subject to Section 938.342, *Wis. Stats.*

State Law Reference: Secs. 118.15, 118.153, 118.16, 118.163 and 938.125, *Wis. Stats.*

### SEC. 11-4-6 PURCHASE OR POSSESSION OF TOBACCO PRODUCTS.

- (a) **Definitions.** For the purposes of this Section:
- (1) Cigarette means any roll of tobacco wrapped in paper or any substance other than tobacco.
  - (2) Law enforcement officer has the meaning given in Section 30.50(4s), *Wis. Stats.*
  - (3) Tobacco products means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but "tobacco products" does not include cigarettes.
- (b) **Prohibition.** Except as provided in Subsection (c) of this Section, no person under eighteen (18) years of age may do any of the following:
- (1) Buy or attempt to buy any cigarette or tobacco product.
  - (2) Falsely represent his or her age for the purpose of receiving any cigarette or tobacco product.
  - (3) Possess any cigarette or tobacco product.
- (c) **Exemptions.** A person under eighteen (18) years of age may purchase or possess cigarettes or tobacco products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer licensed under Section 134.65(1), *Wis. Stats.*, and a person under eighteen (18)

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years of age, but not under fifteen (15) years of age, may buy, attempt to buy, or possess any cigarette or tobacco product under the circumstances specified in Section 254.916(2), *Wis. Stats.*, which concerns commission of such an act for the purpose of an investigation regarding sales of or providing cigarettes to minors by the Wisconsin Department of Health and Family Services under Section 254.916, *Wis. Stats.*

- (d) **Seizure.** A law enforcement officer shall seize any cigarette or tobacco product involved in any violation of Subsection (b) committed in his or her presence.
- (e) **Citation Procedure.** The citation procedure established by Section 778.25(1)(a), *Wis. Stats.*, may be used in an action to recover a forfeiture only for violation of this Section.

State Law Reference: Secs. 139.30(1), 139.75(12), 254.912(2), and 938.983, *Wis. Stats.*

### SEC. 11-4-7 PENALTIES.

Except as provided by Sections 938.17(2), 938.342, and 938.344, *Wis. Stats.*, and the specific provisions of this Chapter concerning forfeitures and other penalties, violations of this Chapter and other Chapters of this Code of Ordinances by juveniles shall be punishable according to the provisions of Section 938.343, *Wis. Stats.* Nothing in this Section shall prevent the juvenile officer, in his/her discretion, from referring cases directly to the District Attorney's office.

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## CHAPTER 5

### Public Nuisances

11-5-1	Public Nuisances Prohibited
11-5-2	Public Nuisances Defined
11-5-3	Public Nuisances Affecting Health
11-5-4	Public Nuisances Offending Morals and Decency
11-5-5	Public Nuisances Affecting Peace and Safety
11-5-6	Exceptions
11-5-7	Abatement of Public Nuisances
11-5-8	Cost of Abatement
11-5-9	Enforcement; Penalty

#### SEC. 11-5-1 PUBLIC NUISANCES PROHIBITED.

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

#### SEC. 11-5-2 PUBLIC NUISANCES 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 offend 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; or
- (e) Constitute a continuous or repeated violation of Village ordinances or State laws which concern the doing or failure to do something that injuriously affects the safety, health, or morals of the public.

State Law Reference: *State v. H. Samuels Co.*, 60 Wis.2d 631, 211 N.W.2d 417 (1973); *State ex rel. Abbott v. House of Vision-Belgard Spero, Inc.*, 259 Wis. 87, 47 N.W.2d 321 (1951); *Town of Delafield v. Sharpley*, 212 Wis.2d 332, 568 N.W.2d 779 (App. Ct. 1997).

#### SEC. 11-5-3 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 11-5-2:

- (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

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foods which are exposed but not buried or otherwise disposed of in a sanitary manner for a period longer than twenty-four (24) hours in the months of April through November or forty-eight (48) hours during the months of December through March.

- (c) **Breeding Places for Vermin, Etc.** Accumulations of decayed animal or vegetable matter, trash, 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) **Stagnant Water.** All stagnant water in which mosquitoes, flies, or other insects can multiply.
- (e) **Garbage Cans.** Garbage cans which are not fly-tight.
- (f) **Nuisance Weeds and Noxious Weeds.** All nuisance weeds and, as defined in this Code of Ordinances and/or State law, noxious weeds and other rank growth of vegetation.
- (g) **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.
- (h) **Noxious Odors, Etc.** Any use of property, substances or things within the Village or within four (4) miles thereof or 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 Village.
- (i) **Street Pollution.** Any use of property which shall cause any nauseous or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the Village.
- (j) **Animals at Large.** All animals running at large.
- (k) **Accumulations of Refuse.** Accumulations of old cans, lumber, elm firewood and other refuse.
- (l) **Air Pollution.** The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the limits of the Village 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.

State Law Reference: Secs. 66.049, 66.052, 66.124, 66.955, 66.96, 92.11, 95.50, 172.01, 254.58, and 823.065, *Wis. Stats.*

### SEC. 11-5-4 PUBLIC NUISANCES OFFENDING MORALS AND DECENCY.

The following acts, omissions, places, conditions and things are hereby specifically declared to be public nuisances offending public morals and decency, but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of Section 11-5-2:

- (a) **Disorderly Houses.** All disorderly houses, bawdy houses, houses of ill fame, gambling houses, and buildings or structures kept or resorted to for the purpose of prostitution, lewdness, assignation, or gambling.
- (b) **Gambling Devices.** All gambling devices and slot machines, except as permitted by State law.
- (c) **Unlicensed Sale of Liquor and Beer.** All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured, or rectified without a valid permit or license as provided for in the ordinances of the Village.
- (d) **Illegal Drinking.** Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of the laws of the State of Wisconsin or ordinances of the Village.
- (e) **Cigarettes.** Any building or place of any kind where cigarettes are sold, possessed, stored, or manufactured without a lawful permit in violation of this Code of Ordinances and/or State law.

State Law Reference: Secs. 125.14(5), 139.42, 823.09, 823.10, 823.20, and 945.01, *Wis. Stats.*

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### SEC. 11-5-5 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 11-5-2:

- (a) **Signs, Billboards, Etc.** All signs and billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated or constructed as to endanger the public safety.
- (b) **Illegal Buildings.** All buildings erected, repaired, or altered in violation of the provisions of the ordinances of the Village and/or State law relating to materials and manner of construction of buildings and structures within the Village.
- (c) **Unauthorized Traffic Signs.** All unauthorized signs, lights, reflectors, markings, or devices placed, displayed, or maintained upon or in view of any public highway or railway crossing which purport to be or may be mistaken as an official traffic control device, railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or by its color, location, brilliance or manner of operation interferes with the effectiveness of any such official traffic sign or signal or railroad sign or signal.
- (d) **Obstruction of Intersections.** All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.
- (e) **Tree Limbs.** All limbs of trees which project over a public sidewalk less than seven (7) feet above the surface thereof and all limbs which project over a public street less than fourteen (14) feet above the surface thereof.
- (f) **Dangerous Trees.** All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.
- (g) **Fireworks.** All use or display of fireworks except as provided by the laws of the State of Wisconsin.
- (h) **Dilapidated Buildings.** All buildings or structures which under Section 66.05(1), *Wis. Stats.*, have been declared so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or have been determined to be unreasonable to repair under Section 66.05(1), *Wis. Stats.*
- (i) **Wires Over Streets.** All wires over streets which are strung less than eighteen (18) feet above the surface thereof.
- (j) **Noisy Animals or Fowl.** The keeping or harboring of any animal or fowl which, by frequent or habitual howling, yelping, barking, crowing or making of other noises shall unreasonably disturb the peace and quiet of the neighborhood in which it occurs.
- (k) **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 Village 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, or which do not conform to the permit.
- (l) **Open Excavations.** All open and unguarded pits, wells, excavations or unused basements accessible from any public street, alley or sidewalk.
- (m) **Abandoned Refrigerators.** All abandoned refrigerators or iceboxes or other containers in violation of Section 11-2-9 of this Code of Ordinances.
- (n) **Flammable Liquids.** Repeated or continuous violations of the ordinances of the Village and/or laws of the State relating to the storage of flammable or combustible material.
- (o) **Unremoved Snow.** All snow and ice not removed pursuant to Section 6-2-5 of this Code of Ordinances.
- (p) **Adult Entertainment.** Violations of Chapter 6 of this Title 11.

State Law Reference: Secs. 27.09, 66.045, 346.41, 349.09, and 823.21, *Wis. Stats.*

## TITLE 11 Offenses and Nuisances – Village of Gays Mills

### SEC. 11-5-6 EXCEPTIONS.

- (a) **Obscene Material or Performance.** The terms and provisions of this Chapter do not prohibit conduct which is the same or similar to conduct prohibited by Section 944.21 of the Wisconsin Statutes.
- (b) **Massage Therapy or Bodywork.** The terms and provisions of this Chapter do not regulate the practice of massage therapy or bodywork, as defined in Section 440.97 of the Wisconsin Statutes, by a person who is issued a license of registration by the Wisconsin Department of Regulation and Licensing.

State Law Reference: Secs. 66.051(3) and 440.979, *Wis. Stats.*

### SEC. 11-5-7 ABATEMENT OF PUBLIC NUISANCES.

- (a) **Applicable Law.** Abatement of public nuisances shall be in accordance with the applicable laws of the State of Wisconsin and this Code of Ordinances.
- (b) **Abatement by Court Action.** Where abatement by court action is required, the Village Board may cause an action to abate such nuisance to be commenced in the name of the Village in accordance with the provisions of Chapter 823, *Wis. Stats.*

### SEC. 11-5-8 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 Village shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance, and such cost shall be assessed against the real estate as a special charge or collected in the case of a court action pursuant to Section 823.06, *Wis. Stats.*

### SEC. 11-5-9 ENFORCEMENT; PENALTY.

- (a) **Enforcement.** The Chief of Police, Fire Chief, Director of Public Works, Weed Commissioner or other responsible Village official shall enforce those provisions of this Chapter that come within the jurisdiction of their offices, and shall make periodic inspections and inspections upon complaint to insure that such provisions are not violated.
- (b) **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 in addition to any and all other remedies in favor of the Village pursuant to State law and/or this Code of Ordinances.

# TITLE 11 Offenses and Nuisances – Village of Gays Mills

## CHAPTER 6

### Adult Entertainment

11-6-1	Statement of Purpose
11-6-2	Investigation
11-6-3	Definitions
11-6-4	Prohibitions Applicable to Premises Holding Alcohol Beverage Licenses
11-6-5	Adult Entertainment at Other Public Places
11-6-6	Further Exceptions
11-6-7	Penalty/Public Nuisance
11-6-8	Severability

#### SEC. 11-6-1 STATEMENT OF PURPOSE.

It is a lawful purpose of the Village Board to enact rules and regulations as are necessary to prevent and avoid the harmful and pernicious secondary effects of adult entertainment, which include the deterioration of neighborhoods, prostitution, sexual assault, and other criminal activity, for the preservation of health and to prevent the spread of AIDS and other communicable or sexually transmitted diseases in the Village of Gays Mills. This Chapter is intended to establish narrowly tailored standards in order to prevent such deleterious effects rather than to suppress free expression.

Federal and State Law Reference: *Barnes v. Glen Theatre*, 501 U.S. 560, 115 L.Ed.2d 504, 111 S.Ct. 2456 (1991); *Lounge Management, Ltd. v. Town of Trenton*, Wisconsin Supreme Court Docket No. 96-1853 (1998); Secs. 66.052 and 125.10, *Wis. Stats.*

#### SEC. 11-6-2 INVESTIGATION

(a) **Local Investigation.** The Village Board, through its counsel, has conducted an investigation of the harmful secondary effects of adult entertainment establishments. This investigation involved inquiry into the harmful secondary effects caused by Fannies, the only adult entertainment establishment operating in Crawford County, Wisconsin, in the past several years. Fannies, a topless bar in the Village of Lynxville, Crawford County, Wisconsin, which closed approximately a year ago after operating for several years, was the subject of observation by the Crawford County Sheriff's Department during its hours of operation. Sheriff of Crawford County related the following harmful secondary effects caused by Fannies to counsel for the Village:

- (1) Prostitution--there were numerous allegations of prostitution by topless dancers at Fannies;
- (2) Battery and Disorderly Conduct--there were several incidents of battery and disorderly conduct inside and outside Fannies during and after its operating hours, one of which involved fractured teeth and was prosecuted;
- (3) Unsafe and Unsanitary Conditions--there were complaints to the Crawford County Sheriff's Department concerning patrons of Fannies urinating on neighboring property, milling about after closing, screeching their tires, and leaving beer cans and broken beer bottles outside;
- (4) Substantial Law Enforcement Problems--Fannies created substantial law enforcement problems for the Crawford County Sheriff's Department in that it became necessary to have two deputy sheriffs there on certain nights, which detracted from the ability of the Crawford County

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- Sheriff's Department to handle other law enforcement matters; and
- (5) Other Community Problems--older residents in the Village of Lynxville were afraid to go out of their homes at night due to their fear of the patrons of Fannies.
- (b) **Other Investigation.** The Village Board, through its counsel, has also relied on the harmful secondary effects reported in caselaw on adult entertainment establishments, including *Tee & Bee, Inc., v. City of West Allis*, 936 F.Supp. 1479 (E.D. Wis. 1996).

### SEC. 11-6-3 DEFINITIONS.

The following definitions are applicable in this Chapter:

- (a) **Adult Bath House.** An establishment or business which provides the service of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional physical therapist licensed by the State of Wisconsin and which establishment provides to its patrons an opportunity for engaging in specified sexual activities or at which a specified anatomical area is exposed or a person appears in a state of nudity in the presence of another person except in sex appropriate bathing and changing areas.
- (b) **Adult Entertainment.** Any live performance, display or dance of any type, which has any actual or simulated performance of specified sexual activities, or exhibition and viewing of specified anatomical areas, appearing unclothed, or the removal of articles of clothing to reveal specified anatomical areas.
- (c) **Adult Modeling Studio.** An establishment or business which provides live modeling services for the purpose of reproducing the human body in a state in which specified anatomical areas are exposed by means of photography, painting, sketching, drawing, or otherwise.
- (d) **Adult Massage Establishment.** A place of business wherein massage, meaning any process or procedure consisting of rubbing, stroking, kneading or tapping, by physical or mechanical means, upon the external parts or tissues of the body of another, is practiced, used, or made available as a principal use of the premises and at which a specified sexual activity occurs or a specified anatomical area is exposed in the presence of another person.
- (e) **Operator.** Any person operating, conducting, maintaining or owning any establishment subject to this Chapter.
- (f) **Specified Anatomical Areas.** The live showing of less than completely and opaquely covered:
- (1) Human genitals, pubic region;
  - (2) Buttocks;
  - (3) Female breast below a point immediately above the top of the areola; or
  - (4) Human male genitals in a discernible turgid state, even if completely and opaquely covered.
- (g) **Specified Sexual Activities.** Live simulated or actual:
- (1) Showing of human genitals in a state of sexual stimulation or arousal;
  - (2) Acts of human masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, and/or cunnilingus; or
  - (3) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts.
- (h) **Person.** Shall include all partnerships, associations, corporations, limited liability companies, and other entities.

### SEC. 11-6-4 PROHIBITIONS APPLICABLE TO PREMISES HOLDING ALCOHOL BEVERAGE LICENSES.

- (a) **Prohibition.** It shall be unlawful for any person and for any owner or operator of premises holding any

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type of Class “A,” “Class A,” Class “B,” or “Class B,” or “Class C” Alcohol Beverage license to permit any person to expose to public view on the licensed premises any specified anatomical areas, or to employ any device which gives the appearance of or simulates specified anatomical areas in public view, or publicly display or perform any specified sexual activities on the licensed premises.

- (b) **Exceptions.** Subsection (a) of this Section, *supra*, shall not apply to a performance by a ballet organization or to theatrical or other performance of recognized artistic merit or to an exposure of human genitals and/or pubic regions in sex appropriate bathrooms that is necessary to excretory functions.
- (c) **Revocation.** Any licensee who permits a violation of Subsection (a) above shall be subject to revocation of all alcohol beverage licenses issued by the Village to the licensee.

Federal and State Law Reference: *Barnes v. Glen Theatre*, 501 U.S. 560, 111 S.Ct. 2456, 115 L.E.2d 504 (1991); *Lounge Management, Ltd. v. Town of Trenton*, Wisconsin Supreme Court Docket No. 96-1853 (1998); Secs. 66.052 and 125.10, *Wis. Stats.*

### SEC. 11-6-5 ADULT ENTERTAINMENT AT OTHER PUBLIC PLACES.

- (a) **Prohibition.** It shall be unlawful for any person at a premises open to the public and for any owner or operator of a premises open to the public to permit any person in public view to appear in a state displaying any part of specified anatomical areas or employ any device which gives the appearance or simulates any part of specified anatomical areas, or display or perform any specified sexual activities, including, but not limited to, adult bath houses excluding exposure of specified anatomical areas in sex appropriate bathing and changing areas, adult massage establishments and adult modeling studios, as well as other premises open to the public which have adult entertainment, whether or not any consideration is offered, solicited, or received for any of the same.
- (b) **Exceptions.** This Section shall not apply to the following:
  - (1) Physicians, surgeons, chiropractors, osteopaths, masseurs, or physical therapists licensed or registered to practice their respective professions under the laws of the State of Wisconsin and nurses registered under the laws of the State of Wisconsin, acting under their direction and control, while legitimately engaged in the duties of their professions, and patients of the same;
  - (2) Barber shops and beauty parlors, barbers and beauticians licensed under the laws of the State of Wisconsin, while legitimately engaged in the duties of their professions, and customers of the same;
  - (3) Accredited high school and college coaches or trainers while legitimately engaged in the duties of their professions, and students who are the recipients of such services;
  - (4) Persons wearing swim attire permitted at public pools, beaches, and recreational facilities;
  - (5) A performance by a ballet organization or a theatrical or other performance of recognized artistic merit;
  - (6) An exposure of human genitals and/or pubic regions in sex appropriate bathrooms that is necessary to excretory functions;
  - (7) An exposure of specified anatomical areas in sex appropriate locker rooms or other sex appropriate changing areas; and
  - (8) Specified sexual activities and exposure of specified anatomical areas in rooms privately rented in a hotel, motel, bed and breakfast, resort, or other public accommodation, or in a camper or tent if at a campground so long as the persons are immediate family members or two consenting adults and the general public is not invited to attend or participate and does not attend or participate in such activities.

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Federal and State Law Reference: *Barnes v. Glen Theatre*, 501 U.S. 560, 111 S.Ct. 2456, 115 L.E.2d 504 (1991); *Lounge Management, Ltd. v. Town of Trenton*, Wisconsin Supreme Court Docket No. 96-1853 (1998); Sec. 66.052, *Wis. Stats.*

### SEC. 11-6-6 FURTHER EXCEPTIONS.

- (a) **Obscene Material or Performance.** The terms and provisions of this Chapter do not prohibit conduct which is the same or similar to conduct prohibited by Section 944.21 of the Wisconsin Statutes.
- (b) **Massage Therapy or Bodywork.** The terms and provisions of this Chapter do not regulate the practice of massage therapy or bodywork, as defined in Section 440.97 of the Wisconsin Statutes, by a person who is issued a license of registration by the Wisconsin Department of Regulation and Licensing.

State Law Reference: Secs. 66.051(3) and 440.97, *Wis. Stats.*

### SEC. 11-6-7 PENALTY/PUBLIC NUISANCE.

In addition to any other actions allowed by law or taken by the Village Board, including the action of license revocation or non-renewal, anyone who violates any of the provisions of this Article shall forfeit not less than Two Hundred Fifty Dollars (\$250.00), but not more than One Thousand Dollars (\$1,000.00), for each and every offense, together with any and all applicable surcharges, assessments, fees, and costs. If such forfeiture and costs are not paid, such person so convicted shall be subject to any civil penalties or other penalties available by law. Each and every act or omission in violation of this Chapter shall constitute a separate offense. Every violation of this Chapter is deemed a public nuisance and may be enjoined by the Village.

### SEC. 11-6-8 SEVERABILITY.

If any provision of this Chapter is deemed invalid or unconstitutional, or if the application of this Chapter to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Chapter which can be given effect without the invalid or unconstitutional provision or application.