

# TITLE 11

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## Offenses and Nuisances

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# Title 11 ► Chapter 1

## State Statutes Adopted

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- 11-1-1** Offenses Against State Laws Subject to Forfeiture  
**11-1-2** Penalties; Attempt; Parties to Acts

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

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

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| 938.125 | Jurisdiction — Juveniles Alleged to Have Violated Civil Laws<br>or Ordinances  |
| 938.17  | Jurisdiction — Juveniles — Traffic, Boating, Snowmobile and<br>All-Terrain Vehicle Violations and Over Civil Law and<br>Ordinance Violations |

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- 938.342 Disposition — Truancy and School Dropout Ordinance Violations
- 938.343 Disposition — Juvenile Adjudged to Have Violated a Civil Law or an Ordinance
- 938.344 Disposition — Certain Intoxicating Liquor, Beer and Drug Violations
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- 939.05(2)(b) Aiding and Abetting
- 939.22 Words and Phrases Defined
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- 941.12(2),(3) Interfering With or Failing to Assist in Firefighting
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- 941.20(1) Reckless Use of Weapon
- 941.23 Carrying Concealed Weapon
- 941.235 Carrying a Firearm in a Public Building
- 941.24 Possession of Switchblade Knife
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**Sec. 11-1-2 Penalties; Attempt; Parties to Acts.**

- (a) **Penalty.** In addition to the general penalty provisions of this Code in Section 1-1-7 or any other penalty imposed for violation of any Section of this Title, any person who shall cause physical damage to or destroy any public property shall be liable for the cost of replacing or repairing such damaged or destroyed property. The parent or parents of any unemancipated juvenile who violates Section 11-3-1 may also be held liable for the cost of replacing or repairing such damaged or destroyed property in accordance with the Wisconsin
- (b) **Statutes.** Nothing in this Code of Ordinances shall prevent the Police Department from referring violations of the provisions of this Title to the District Attorney's office in the interest of justice.



(c) **Attempt.**

- (1) Whoever attempts to commit an act prohibited by Title 11 of the Code of Ordinances of the City of Amery may be required to forfeit amounts not to exceed one-half (1/2) the maximum penalty for the completed act.
- (2) An attempt to commit an act prohibited by the ordinances in Title 11 requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute a violation of these ordinances and that he/she does acts towards the commission of the violation which demonstrate unequivocally, under all the circumstances, that he/she formed that intent and would commit the violation except for the intervention of another person or some other extraneous factor.

(d) **Parties to Acts Prohibited in Title 11.**

- (1) Whoever is concerned in the commission of an act prohibited by Title 11 of this Code of Ordinances, is a principle and may be charged with and convicted of the commission of said act although he/she did not directly commit it and although the person who directly committed it has not been convicted of some other act prohibited by these ordinances.
- (2) A person is concerned in the commission of an act prohibited by these ordinances if he/she:
  - a. Directly commits the act; or
  - b. Intentionally aids and abets the commission of it; or
  - c. Is a party to a conspiracy with another to commit it or advises, hires, counsels, or otherwise procures another to commit it. Such party is also concerned in the commission of any other act which is committed in pursuance of the intended violation and which, under the circumstances, is the natural and probable consequence of the intended violation. This paragraph does not apply to a person who voluntarily changes his/her mind and no longer desires that the act be committed and notifies the other parties concerned of his/her withdrawal within a reasonable time before the commission of the violation so as to allow the others also to withdraw.



## Title 11 ► Chapter 2

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# Offenses Against Public Safety and Peace

<b>11-2-1</b>	Regulation of Firearms, Explosives, and Other Missiles
<b>11-2-2</b>	Carrying Concealed Weapons Prohibited; Certain Weapons Prohibited
<b>11-2-3</b>	Safe Use and Transportation of Firearms and Bows
<b>11-2-4</b>	Sale and Discharge of Fireworks Restricted
<b>11-2-5</b>	Obstructing Streets and Sidewalks Prohibited
<b>11-2-6</b>	Loitering Prohibited
<b>11-2-7</b>	Disorderly Conduct
<b>11-2-8</b>	Unauthorized Presence on School Property
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<b>11-2-11</b>	Crossing a Police Line
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<b>11-2-17</b>	Possession, Manufacture and Delivery of Drug Paraphernalia
<b>11-2-18</b>	Improper Use of Amery Municipal Airport Facilities
<b>11-2-19</b>	Fishing from Bridges

### **Sec. 11-2-1 Regulation of Firearms, Explosives, and Other Missiles.**

- (a) **Discharge of Firearms Regulated.** No person, except a law enforcement officer in the performance of an official duty, shall fire or discharge any firearm, rifle, spring gun, air gun, BB gun, or pneumatic pellet gun of any description in his/her possession or under his/her control within the City of Amery, provided that this Section shall not prevent the maintenance and use of duly supervised rifle or pistol ranges or shooting galleries authorized by the Common Council, or the firing or discharging of BB guns upon private premises by persons over sixteen (16) or under the direct personal supervision of a parent or guardian.
- (b) **Hunting Prohibited.** Hunting within the City of Amery is prohibited.

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- (c) **Shooting Into City Limits.** No person shall in the territory adjacent to the City discharge any firearm in such manner that the discharge shall enter or fall within the City of Amery.
- (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 Common Council, 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 City without first obtaining a permit to do so from the Common Council.
- (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 Common Council.
    - c. Within the interior of a single family dwelling.
    - d. To private archery practice provided such targets are placed in front of a building in such a manner as to prevent stray arrows from crossing or entering adjacent properties.
- (g) **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.

**Sec. 11-2-2 Carrying Concealed Weapons Prohibited;  
Certain Weapons Prohibited.**

- (a) **Concealed Weapons Prohibited.**
  - (1) **Prohibition.** No person shall, within the City of Amery, wear or in any manner carry under his/her clothes or conceal upon or about his/her person any deadly or dangerous weapon, provided this Subsection shall not apply to a peace officer or such persons as may be authorized to carry such weapons.
  - (2) **Dangerous Weapon Defined.** "Dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, 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.
- (b) **Weapons in Public Establishments.** No person shall carry or be possessed of a dangerous weapon in any public building or business establishment open to the public

except a bona fide weapons repair, display, or sales establishment, unless such dangerous weapon is so stored and secured (other than on the person) so as not to be readily accessible to any person or patron. This Subsection shall not apply to law enforcement officers or others duly authorized by law acting within the scope of their duties. This Subsection shall not be construed to prohibit the sale, purchase, repair or trade of firearms by a retail business establishment doing so in the course of its regular business in accord with state and federal law, nor to hinder a prospective customer from attempting to buy, sell, or trade firearms to or from a retailer.

(c) **Specific Concealed Weapons Prohibited.**

- (1) No person, except a sheriff, constable, police officer or other law enforcement officer acting within the scope of their duties, shall carry or wear concealed about his/her person any pistol, revolver, firearm, sling shot, crossknuckle of lead, brass or other materials, bowie knife, switchblade, dirk or dagger or any other dangerous or deadly weapon within the City of Amery.
- (2) Any weapon involved in an offense under this Subsection above, may be seized and may be forwarded, within forty-eight (48) hours of seizure, to the Crime Laboratory, Division of the Wisconsin Department of Justice for examination. After examination by the Crime Laboratory, the weapon shall be returned to the City of Amery Police Department. If the weapon is owned by a person convicted under this Subsection, it may be confiscated by the Amery Police Department. If it is owned by a person other than the person convicted, the trial judge may decide whether such weapon shall be returned to its rightful owner or confiscated by the City of Amery Police Department.

(d) **Possession, Sale, and Manufacture of Certain Weapons Prohibited.**

- (1) No person shall sell, manufacture, purchase, possess or carry metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles, a "numchuk" (also called a "nunchaku") or any similar weapon, a "cestus" or similar material weighted with metal or other substance and worn on the hand, a "churkin" (also called a "suriken") or any similar object intended to injure a person when thrown, a "suchbai" or similar weapon, a "manrikigusari" or a similar length of chain having weighted ends, or any other martial arts device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce injury or death to another person within the City of Amery.
- (2) For the purpose of this Section, the following definitions shall apply:
  - a. **Numchuk or Nunchaku.** An instrument consisting of two (2) or more sticks, clubs, or rods connected by a rope, cord, wire, or chain.
  - b. **Churkin.** A round throwing knife consisting of several sharp points protruding from a rounded disc.
  - c. **Suchbai.** A short length of wood or metal or similar material which, when gripped in the hand, protrudes on either side of the fist. Such prohibited

instrument may or may not have spikes or short pointed protrusions from either end.

- (3) Any such device shall be seized by a law enforcement officer and destroyed or turned over to the State of Wisconsin Crime Laboratory for destruction.

(e) **Reckless Use of Weapons.**

(1) **Acts Prohibited.**

- a. No person shall endanger another's safety by reckless conduct in the operation or handling of a firearm, air gun, knife or bow and arrow.
- b. No person shall operate or go armed with a firearm, air gun, knife or bow and arrow while he/she is under the influence of an intoxicant.
- c. No person shall intentionally point a firearm, air gun, knife or bow and arrow at or toward another person.

- (2) **Reckless Conduct Defined.** "Reckless conduct" consists of an act which creates a situation of unreasonable risk and high probability of death or great bodily harm to another and which demonstrates a conscious disregard for the safety of another and a willingness to take chances of perpetrating an injury.

### **Sec. 11-2-3 Safe Use and Transportation of Firearms and Bows.**

(a) **Definitions.** In this Section:

- (1) **Aircraft** has the meaning given under Sec. 114.002(3), Wis. Stats.
- (2) **Encased** means enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied or otherwise fastened with no part of the firearm exposed.
- (3) **Firearm** means a weapon that acts by force of gunpowder.
- (4) **Highway** has the meaning given under Sec. 340.01(22), Wis. Stats.
- (5) **Motorboat** has the meaning given under Sec. 30.50(6), Wis. Stats.
- (6) **Roadway** has the meaning given under Sec. 340.01(54), Wis. Stats.
- (7) **Unloaded** means any of the following:
  - a. Having no shell or cartridge in the chamber of a firearm or in the magazine attached to a firearm.
  - b. In the case of a cap lock muzzle-loading firearm, having the cap removed.
  - c. In the case of a flint lock muzzle-loading firearm, having the flashpan cleaned of powder.
- (8) **Vehicle** has the meaning given under Sec. 340.01(74), Wis. Stats., and includes a snowmobile, as defined under Sec. 340.01(58a), Wis. Stats.

(b) **Prohibitions; Motorboats and Vehicles; Highways and Roadways.**

- (1) Except as provided in Subsection (c), no person may place, possess or transport a firearm, bow or crossbow in or on a motorboat with the motor running, unless the

firearm is unloaded or unless the bow or crossbow is unstrung or is enclosed in a carrying case.

- (2) Except as provided in Subsection (c), no person may place, possess or transport a firearm, bow or crossbow in or on a vehicle, unless the firearm is unloaded or unless the bow or crossbow is unstrung or is enclosed in a carrying case.
  - (3) Except as provided in Subsection (c), no person may load or discharge a firearm or shoot a bolt or an arrow from a bow or crossbow in or from a vehicle.
  - (4) Except as provided in Subsection (c), no person may load or discharge a firearm or shoot a bolt or an arrow from a bow or crossbow from or across a highway or within fifty (50) feet from the center of a road.
  - (5) A person who violates Subsections (1) through (4) above is subject to a forfeiture pursuant to Section 1-1-6.
- (c) **Exceptions.**
- (1) Subsection (b) does not apply to any of the following who, in the line of duty, place, possess, transport, load or discharge a firearm in, on or from a vehicle, motorboat or aircraft or discharge a firearm in, on or from a vehicle, motorboat or aircraft or discharge a firearm from or across a highway or within fifty (50) feet of the center of a roadway:
    - a. A peace officer, as defined under Sec. 939.22(22), Wis. Stats.
    - b. A member of the U.S. armed forces.
    - c. A member of the National Guard.
  - (2) Subsections (b)(1), (2) and (3) do not apply to the holder of a scientific collector permit under Sec. 29.17, Wis. Stats., who is using a net gun or tranquilizer gun in an activity related to the purpose for which the permit was issued.
  - (3) Subsections (b)(2) and (3) do not apply to the holder of a permit under Sec. 29.09, Wis. Stats., who is hunting from a standing automobile in accordance with that Subsection.

### **Sec. 11-2-4 Sale and Discharge of Fireworks Restricted.**

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

*State Law Reference:* Sec. 167.10, Wis. Stats.

## Sec. 11-2-5 Obstructing Streets and Sidewalks Prohibited.

- (a) **Obstructing Streets.** No person shall obstruct, loiter, cause a nuisance or engage in any sport or exercise on any public street, sidewalk, bridge or public ground within the City of Amery in such a manner as to:
- (1) Prevent or obstruct the free passage of pedestrian or vehicular traffic thereon;
  - (2) Prevent or hinder free ingress or egress to or from any place of business or amusement, church, public hall or meeting place; or
  - (3) Cause a nuisance by congregating and hindering the free passage of pedestrian or vehicular traffic.
- (b) **Obstructing Public Ways.**
- (1) No person shall obstruct or interfere with by any means any vehicular, railroad or pedestrian traffic on any public walk, highway, street, alley, railroad track or public thoroughfare for the purpose of disrupting the orderly movement of such traffic or to impede intentionally or unintentionally the flow of the vehicular, train or pedestrian traffic on a public walk, highway, street, alley, railroad track or public thoroughfare or at any public building or premises, parking lot or structure.
  - (2) Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets and sidewalks is a violation of this Section.
- (c) **Definitions.** As used in this Section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:
- (1) **Loiter.** To sit, stand, loaf, lounge, wander or stroll in an aimless manner or to stop, pause or remain in an area for 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 City of Amery.
  - (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 City. The term shall not include sidewalks or walkways on private property in shopping centers, apartment complexes, office building sites or any other private property.
- (d) **Free Speech.** This Section shall not be interpreted as prohibiting any person from stopping on any sidewalk to talk or to make a speech, provided that such person shall not stand in such a location that it is impossible for any pedestrian to travel along the sidewalk without leaving the sidewalk and walking on adjacent property or on the street. If two (2) or more persons are engaged in talking while stopped on a sidewalk, they shall not stand

in such locations as to completely prevent any pedestrian from passing them on the sidewalk.

## **Sec. 11-2-6 Loitering Prohibited.**

### **(a) Public Property Loitering Prohibited.**

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

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

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

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

- (1) No person shall loiter or prowl in a place, at a time or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person takes flight

upon appearance of a police or peace officer, refuses to identify himself/herself or manifestly endeavors to conceal himself/herself or any object. Unless flight by the person or other circumstances makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this Section, afford the person an opportunity to dispel any alarm which would otherwise be warranted, by requesting him/her to identify himself/herself and explain his/her presence and conduct. No person shall be convicted of an offense under this Subsection if the law enforcement did not comply with the preceding sentence, or if it appears at trial that the explanation given by the person was true and, if believed by the law enforcement officer at the time, would have dispelled the alarm.

- (2) No person shall hide, wait or otherwise loiter in the vicinity of any private dwelling house, apartment building, or any other place of residence with the unlawful intent to watch, gaze or look upon the occupants therein in a clandestine manner.
- (3) No person shall lodge in any building, structure or place, whether public or private, without the permission of the owner or person entitled to possession or in control thereof.
- (4) No person shall loiter in or about a restaurant, tavern or other public building. As used in this Subsection, "loiter" means to, without just cause, remain in a restaurant, tavern or public building or to remain upon the property immediately adjacent thereto after being asked to leave by the owner or person entitled to possession or in control thereof.

(d) **Loitering by Underage Persons Where Alcohol Beverage is Dispensed.**

- (1) **Underage Persons and Intoxicants.** No underage person shall enter, remain or loiter in any public or private place where any fermented malt beverage or other alcohol beverage is sold, dispensed, given away or made available, unless accompanied by a parent, guardian or spouse who has attained the legal drinking age.
- (2) **Permitting Loitering Prohibited.** No person of legal drinking age shall permit any underage person to enter, remain or loiter in any premises, public or private, where fermented malt beverages or other alcohol beverages are served, sold, dispensed, given away or made available, unless such underage person is accompanied by a parent, guardian or spouse who has attained the legal drinking age.

(e) **Definitions.** As used in this Section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

- (1) **Loiter.** To sit, stand, loaf, lounge, wander or stroll in an aimless manner or to stop, pause or remain in an area for no obvious reason.
- (2) **Nuisance.** Unnecessary conduct which may tend to annoy, intimidate, threaten or otherwise disturb another in or about any public street, sidewalk, bridge or public ground which is offensive to the public morals or decency of the citizens of the City of Amery.

(f) **Soliciting.** No person shall loiter in or near any thoroughfare or place open to the public in a manner and under circumstances manifesting the purpose of inducing, enticing,

soliciting or procuring another to commit an act of prostitution. Among the circumstances which may be considered in determining whether such purpose is manifested: that such person is a known prostitute or panderer, that such person repeatedly beckons to stop or attempts to stop, or engages male or female passersby in conversation, or repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms or any other bodily gesture. The violator's conduct must be such as to demonstrate a specific intent to induce, entice, solicit or produce another to commit an act of prostitution. No arrest shall be made for a violation of this Subsection unless the law enforcement officer first affords such persons an opportunity to explain such conduct, and no one shall be convicted of violating this Subsection if it appears at trial that the explanation given was true and disclosed a lawful purpose. As used in this Subsection:

- (1) **Public Place** is an area generally visible to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those which serve food or drink or provide entertainment, and the doorway and entrance to buildings or dwellings and the grounds enclosing them.
- (2) **Known Prostitute or Panderer** means a person who, within five (5) years previous to the date of arrest for violation of this Section, had, within the knowledge of the sworn police officer, been convicted in any municipal court or circuit court in the State of Wisconsin of an offense involving prostitution.

## Sec. 11-2-7 Disorderly Conduct.

- (a) **Disorderly Conduct Prohibited.** No person within the City of Amery shall:
  - (1) In any public or private place engage in violent, noisy, riotous, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to cause or provoke an immediate disturbance of public order or tends to annoy or disturb any other person;
  - (2) Intentionally cause, provoke or engage in any fight, brawl, riot or noisy altercation;
  - (3) With intent to annoy another, make a telephone call, whether or not conversation ensues;
  - (4) Indecently expose his or her person;
  - (5) Be in any business or private structure, private vehicle or upon any private grounds without the consent of the owner.
- (b) **Violent and Abusive Behavior; Non-Verbal Gestures.** No person in any public or private place may engage in any violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to cause or provoke an immediate disturbance of public order or tends to disturb or annoy any other person. Such prohibited conduct also includes non-verbal gestures, signals or gang signs if said conduct tends to cause or

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provoke an immediate disturbance of public order or tends to disturb or annoy any other person.

- (c) **Defecating or Urinating in Public Places.** It shall be unlawful for any person to defecate or urinate outside of designed sanitary facilities, upon any sidewalk, street, alley, public parking lot, park, playground, cemetery or other public area within the City, or upon any private property in open view of the public, or in the halls, rooms without restroom facilities, stairways or elevators of public or commercial buildings, or to indecently expose his/her person.
- (d) **Disturbance of Meetings.** No person may disrupt or disturb any congregation, audience, public meeting or lawful assembly of persons of any kind, or in concert with others disturb or disrupt such meeting.

**Sec. 11-2-8 Unauthorized Presence on School Property.**

(a) **Unauthorized Presence.**

- (1) No student who is under suspension, expulsion, or other disciplinary procedures excluding him/her from attending any school located within the City or any person not a student presently enrolled or not an employee of such schools or not a parent or guardian of a student, or not an otherwise "authorized person," shall be present within any school building or upon any school grounds without having first secured authorization to be there from the principal or other person in charge of the school building or school grounds, except while in direct route to secure such authorization.
- (2) Any unauthorized person who shall come upon school property and refuses to leave upon request by the school principal or any person acting under the direction of the school principal, in addition to violating Subsection (a)(1), shall be guilty of trespass.
- (3) "Authorized person" shall include:
  - a. Any person who is present at any school building or school grounds for the purpose previously authorized by the school or their designee;
  - b. Any person transporting a student and who utilizes the driveway specified for loading and unloading personnel;
  - c. Any person utilizing a designated area for attending an athletic or other organized school event.

(b) **Disorderly Conduct on Public School Property.**

- (1) No person shall, on any school property or building, engage in violent, abusive, loud or otherwise disorderly conduct which causes or provokes an immediate disturbance of public order or disturbs or annoys any other person; nor shall a person intentionally engage in any fight, brawl, riot or noisy altercation other than a bona fide athletic contest.
- (2) Non-students, students from schools other than the school on the property or students from a school who are not in compliance with the School System's published rules

- and regulations shall be considered in violation of this Section. The published rules and regulations of the School System are incorporated as if fully set forth herein.
- (3) All entrances to the school buildings referred to in Subsection (a) shall be posted by the School Board with a notice stating "Entry Into School Building by Unauthorized Person Prohibited."
  - (4) "Unauthorized presence" shall include any vehicle that is found on school property which has not received permission to be there. If the occupants or owners are not on school property for some legitimate business or activity or are parked in an area that regulates parking to certain authorized vehicles, they are in violation. Such vehicle may be issued a City summons that regulates parking or may be towed away at the direction of the school principal or person in charge of such school building. Law enforcement officers may also have any vehicle towed away which, because of its location, creates a hazard to life or property.
- (c) **Loitering Near School Prohibited.** No person not in official attendance or on official school business shall enter into, congregate, loiter or cause a nuisance in any school building in the City of Amery or upon any Amery School District grounds or within adjacent posted school zones on any day when such schools are in session.
  - (d) **Possession of Intoxicating Liquor and Fermented Malt Beverages.** No person shall possess intoxicating liquor or fermented malt beverages while on any school property.
  - (e) **Definitions.** As used in this Section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended.
    - (1) **Loiter.** To sit, stand, loaf, lounge, wander or stroll in an aimless manner or to stop, pause or remain in an area for no obvious reason.
    - (2) **Nuisance.** Unnecessary conduct which may tend to annoy, intimidate, threaten or otherwise disturb another in or about any public street, sidewalk, bridge or public ground which is offensive to the public morals or decency of the citizens of the City of Amery.

### **Sec. 11-2-9 Failure to Obey Lawful Order; Resisting an Officer.**

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

endeavor to do so, or to in any manner assist any person in the custody of any law enforcement officer to escape or to attempt to escape from such custody, or to try to persuade any person to escape from the custody of such officer, or to rescue or attempt to rescue any person so in custody or to fail to obey the order or direction of such officer while such officer is acting in his/her official capacity in carrying out his/her duties.

### **Sec. 11-2-10 Possession of Controlled Substances; Marijuana.**

- (a) **Possession of Controlled Substances.** It is unlawful for any person to possess a controlled substance, other than a controlled substance classified in schedule I and II under Chapter 961, Wis. Stats., which is a narcotic drug, unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his/her professional practice, or except as otherwise authorized by this Code of Ordinances.
- (b) **Possession of Marijuana.**
- (1) No person shall possess twenty-five (25) grams or less of marijuana, as defined in Sec. 961.01, 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.
  - (2) For purposes of this Section, "practitioner" means:
    - a. A physician, dentist, veterinarian, podiatrist, scientific investigator or other person 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.
    - b. 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.
  - (3) 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.

*State Law Reference:* Chapter 961, Wis. Stats.

### **Sec. 11-2-11 Crossing a Police Line.**

No individual shall cross a police or fire line that has been so designated by banner, signs or other similar identification.

**Sec. 11-2-12 Harassment.**

- (a) **Harassment.** No person, with intent to harass or intimidate another person, shall do any of the following; each instance shall be considered a separate violation:
- (1) Strike, shove, kick or otherwise subject the person to physical contact or attempts or threatens to do the same.
  - (2) Engage in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose.
- (b) **Harassing or Obscene Telephone Calls.** Whoever commits any of the following acts shall be subject to the general penalty as provided in this Code of Ordinances:
- (1) Makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious or indecent;
  - (2) Makes a telephone call, whether or not conversation ensues, with the intent to abuse, threaten or harass any person at the called number or numbers;
  - (3) Makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number or numbers;
  - (4) Makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number or numbers;
  - (5) Knowingly permits any telephone under his/her control to be used for any purpose prohibited by this Section;
  - (6) In conspiracy or concerted action with other persons, makes repeated calls or simultaneous calls solely to harass any person at the called number or numbers.

*State Law Reference:* Sec. 947.013, Wis. Stats.

**Sec. 11-2-13 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 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.

**Sec. 11-2-14 Gambling, Lotteries, Fraudulent Devices and Practices Prohibited.**

All forms of gambling, lotteries and fraudulent devices and practices are prohibited within the City, except as provided by state law. Any law enforcement officer of the City may seize

anything devised solely for unlawful gambling or found in actual use for gambling within the City and dispose thereof after a judicial determination that such device was used solely for gambling or found in actual use for gambling.

## **Sec. 11-2-15 Obstructing Emergency or Rescue Personnel.**

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

the county board to be operated as emergency vehicles. The sheriff or others designated by the county board may make such authorization which shall be in writing and which shall be effective throughout the state until rescinded. The sheriff or others designated by the county board may designate any owner of ambulances usually kept in the county to operate such vehicles as authorized emergency vehicles. Such written authorization shall at all times be carried on each ambulance used for emergency purposes. The sheriff shall keep a file of such authorizations in his/her office for public inspection, and all other persons permitted to issue authorizations shall file a copy of all authorizations issued with the sheriff who shall keep them on file;

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

## **Sec. 11-2-16 Improper Use of Lodging Establishments.**

- (a) **Definitions.** In this Section:
- (1) **Alcohol Beverages** has the meaning given in Sec. 125.02(1), Wis. Stats.
  - (2) **Controlled Substances** has the meaning given in Sec. 961.01(4), Wis. Stats.
  - (3) **Lodging Establishment** has the meaning given in Sec. 101.22(1m)(n), Wis. Stats.
  - (4) **Underage Person** has the meaning given in Sec. 125.02(20m), Wis. Stats.
- (b) **Improper Activities.** Any person who procures lodging in a lodging establishment, and permits or fails to take action to prevent any of the following activities from occurring in the lodging establishment, is subject to the penalties provided in Section 1-1-7.

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- (c) **Denial of Lodging.** An owner or employee of a lodging establishment may deny lodging to an adult if the owner or employee reasonably believes that consumption of an alcohol beverage by an underage person, not accompanied by his or her parent, legal guardian or spouse, who has attained the legal drinking age, or illegal use of a controlled substance, may occur in the area of the lodging establishment procured.
- (d) **Deposits.** An owner or employee of a lodging establishment may require a cash deposit or use of a credit card at the time of application for lodging.

**Sec. 11-2-17 Possession, Manufacture and Delivery of Drug Paraphernalia by a Minor Prohibited.**

- (a) **Definition.** In this Section, "drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, selling, distributing, delivering, 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, as defined in Ch. 961, Wis. Stats., in violation of this Section. It includes but is not limited to:
  - (1) Kits used, 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 can be derived.
  - (2) Kits used, intended for use, or designed for use, in manufacturing, selling, distributing, delivering, compounding, converting, producing, processing, or preparing controlled substances.
  - (3) Isomerization devices used, 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, intended for use, or designed for use, in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.
  - (5) Scales and balances used, intended for use, or designed for use, in weighing or measuring controlled substances.
  - (6) Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances.
  - (7) Separation gins and sifters used, intended for use, or designed for use, in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
  - (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use, in compounding controlled substances.
  - (9) Capsules, balloons, envelopes, or other containers used, intended for use, or designed for use, in packaging small quantities of controlled substances.

- (10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.
  - (11) Hypodermic syringes, needles, or other objects used, intended for use, or designed for use, in parenterally injecting controlled substances into the human body.
  - (12) Objects used, 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. 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. Bong;
    - m. Ice pipes or chillers.
- (b) **Determination of Drug Paraphernalia.** In determining whether an object is drug paraphernalia, the following shall be considered, without limitation of such other considerations a court may deem relevant:
- (1) Statements by an owner or by anyone in control of the object concerning its use.
  - (2) Prior convictions, if any, of an owner or of anyone in control of the object, under any city, state or federal law relating to any controlled substance.
  - (3) The proximity of the object in time and space to a direct violation of this Section.
  - (4) The proximity of the object to controlled substances.
  - (5) The existence of any residue of controlled substance on the object.
  - (6) Direct or circumstantial evidence of the intent of the owner, or of anyone in control of the object, to deliver it to persons whom the person knows, or should reasonably know, intend to use the object to facilitate a violation of this Section. The innocence of an owner, or of anyone in control of this 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.
  - (7) Oral or written instructions provided with the object concerning its use.
  - (8) Descriptive materials accompanying the object which explain or depict its use.
  - (9) National and local advertising concerning its use.
  - (10) The manner in which the object is displayed for sale.

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- (11) Direct or circumstantial evidence of the ratio of sales of the object to the total sale of the business enterprise.
  - (12) The existence and scope of legitimate uses for the object in the community;
  - (13) Expert testimony concerning its use.
- (c) **Prohibited Uses.**
- (1) **Possession of Drug Paraphernalia.** No person 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 in violation of this Subsection.
  - (2) **Manufacture or Delivery of Drug Paraphernalia.** No person 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 in violation of this Subsection.
  - (3) **Delivery of Drug Paraphernalia by a Minor to Minor.** Any person who is under eighteen (18) years of age, who violates Subsection (c)(2) by delivering drug paraphernalia to a person under eighteen (18) years of age who is at least three (3) years younger than the violator, is guilty of a special offense.
  - (4) **Exemption.** This Section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with Ch. 961, Wis. Stats. This Section does not prohibit the possession, manufacture or use of hypodermics, in accordance with Ch. 961, Wis. Stats.
- (d) **Penalties.** Any person who violates Subsection (c)(1), (2) or (3), shall upon conviction, be subject to disposition under Sec. 938.344(2e), Wis. Stats.

### **Sec. 11-2-18 Improper Use of Amery Municipal Airport Facilities.**

No person shall utilize the runways, taxiways, fields, or any other portion of the Amery Municipal Airport for takeoffs, non-emergency landings or tethering of any object, vehicle or conveyance which does not possess a valid certificate of air worthiness as issued by the Federal Aviation Administration, or landing parachute dropped persons or objects.

### **Sec. 11-2-19 Fishing from Bridges.**

Fishing from bridges is prohibited in the City of Amery.

## Title 11 ► Chapter 3

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# Offenses Against Property

<b>11-3-1</b>	Destruction of Property Prohibited
<b>11-3-2</b>	Littering Prohibited
<b>11-3-3</b>	Abandoned Refrigerators Prohibited
<b>11-3-4</b>	Theft of Library Material
<b>11-3-5</b>	Damage to Public Property
<b>11-3-6</b>	Retail Theft
<b>11-3-7</b>	Issuance of Worthless Checks
<b>11-3-8</b>	Trespass
<b>11-3-9</b>	Regulation of Smoking
<b>11-3-10</b>	Theft Prohibited
<b>11-3-11</b>	Fraud on Residential Landlords Prohibited
<b>11-3-12</b>	Graffiti
<b>11-3-13</b>	Cemetery Regulations

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

- (a) **Destruction of Property.** No person shall willfully injure or intentionally deface, destroy, or unlawfully remove or interfere with any property belonging to the City of Amery, the Amery School District, or to any private person without the consent of the owner or proper authority, nor shall any person or organization place or permit to be placed any sign, poster, advertisement, notice, or other writing upon any utility ornamental light pole belonging to the City without the consent of proper authority. Any signs, posters, advertisements, notices, or other writings so placed shall be removed by law enforcement authorities and the placing person or organization cited for violation of this Section.
- (b) **Parental Liability.** Pursuant to Sec. 895.035, Wis. Stats., the parents of an unemancipated minor shall be liable for the damage of property caused by the willful, malicious or wanton act of such child; such liability shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00).
- (c) **Penalty Provisions.**
- (1) Any person seventeen (17) years of age or over who violates this Section is subject to a penalty as provided in Section 1-1-7, restitution to the injured party, and the costs of prosecution.

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- (2) Any person twelve (12) years of age to sixteen (16) years of age shall be subject to a forfeiture not to exceed Twenty-five Dollars (\$25.00) and any other applicable penalty provided by Sec. 938.344, Wis. Stats., as that Section may exist, be amended or changed.
- (d) **Victim Remedies.** Any person or entity injured by a violation of this Section by a minor child shall be advised of the rights and remedies available under Sec. 895.035, Wis. Stats.

**Sec. 11-3-2 Littering Prohibited.**

- (a) **Littering Prohibited.** No person or persons shall or shall permit or allow any other person to deposit, discharge, release or abandon any solid waste as that term is defined at Sec. 144.01(15), Wis. Stats., on any City street, alley, park or other municipal or governmental property, nor on property owned by another person, nor in or upon the surface of any body of water in the City of Amery.
- (b) **Litter From Conduct of Commercial Enterprise.**
  - (1) **Scope.** The provisions of this Subsection shall apply to all sales, promotions and other commercial ventures that result in litter being deposited on any street, alley or other public way.
  - (2) **Litter to be cleaned up.** Any person, firm, corporation or association carrying on an enterprise that results in litter being deposited on any street, alley or other public way shall clean up the same within twelve (12) hours of the time the same is deposited. If any such litter is subject to being blown about, it shall be picked up immediately. If any such litter is likely to attract animals or vermin, such litter shall be picked up immediately.
  - (3) **Litter picked up at litterer's expense.** If any person, firm, corporation or association fails to pick up any litter as required by Subsection (b)(1) within the time specified, the City shall arrange to have the same picked up by City crews or by private enterprise. The entire expense of picking up such litter, together with an additional charge of twenty percent (20%) for administrative expenses, shall be charged to the person, firm, corporation or association that did the littering. If such sum is not promptly paid, steps shall be taken, with the advice of the City Attorney's office, to collect the same. This charge shall be in addition to any forfeiture or other penalty for violation of this Section.
- (c) **Depositing of Materials Prohibited.** It shall be unlawful for any person to deposit, cause or permit to be deposited, placed or parked any vegetation, grass, leaves, foliage, earth, sand, gravel, water, snow, ice, debris, waste material, foreign substance, construction materials, equipment or object upon any street, sidewalk or public property without authorization of the Common Council, law enforcement officer, Building Inspector or Director of Public Works to the provisions of this Code of Ordinances, or upon any private property without the consent of the owner or lessee of the property. Any person who

deposits, causes or permits to be deposited, placed or parked any such materials, equipment or objects upon any street, sidewalk or property shall be responsible to properly mark or barricade the area so as to prevent a safety hazard.

(d) **Handbills.**

(1) **Scattering Prohibited.** It shall be unlawful to deliver any handbills or advertising material to any premises in the City except by being handed to the recipient, placed on the porch, stoop or entrance way of the building or firmly affixed to a building so as to prevent any such articles from being blown about, becoming scattered or in any way causing litter.

(2) **Papers in Public Places Prohibited.** It shall be unlawful to leave any handbills, advertising material or newspapers unattended in any street, alley, public building or other public place, provided that this shall not prohibit the sale of newspapers in vending machines.

(e) **Citation Method of Enforcement.** The Wisconsin Uniform Municipal Citation described and defined in the Wisconsin Statutes shall be used for enforcement of this Section. The Police Department shall be responsible for enforcement of this Section.

*State Law Reference:* Sec. 144.01(15), Wis. Stats.

### **Sec. 11-3-3 Abandoned Refrigerators Prohibited.**

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

### **Sec. 11-3-4 Theft of Library Material.**

(a) **Definitions.** For the purposes of this Section, certain words and terms are defined as follows:

(1) **Archives.** A place in which public or institutional records are systematically preserved.

(2) **Library.** Means any public library, library of an educational or historical organization or society or museum, and specifically the public libraries within the City of Amery and school libraries.

- (3) **Library Material.** Includes any book, plate, picture photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microform, sound recording, audiovisual materials in any format, magnetic or other tapes, electronic data processing records, or other tapes, artifacts or other documents, written or printed materials, regardless of physical form of characteristics, belonging to, on loan to or otherwise in the custody of a library.
- (b) **Possession Without Consent Prohibited.** Whoever intentionally takes and carries away, transfers, conceals or retains possession of any library material without the consent of a library official, agent or employee and with intent to deprive the library of possession of the material may be subject to a forfeiture as provided by the general penalty provisions of this Code. The failure to return library material after its proper return date, after written notice from the library and City Attorney, shall be deemed to be theft. Notice shall be considered given when written notice is mailed to the last-known address of the person with the overdue material; the notice date shall be the date of mailing.
- (c) **Concealment.** The concealment of library material beyond the last station for borrowing library material in a library is evidence of intent to deprive the library of possession of the material. The discovery of library material which has not been borrowed in accordance with the library's procedures or taken with consent of a library official, agent or employee and which is concealed upon the person or among the belongings of another is evidence of intentional concealment on the part of the person so concealing the material.
- (d) **Detention Based on Probable Cause.** An official or adult employee or agent of a library who has probable cause for believing that a person has violated this Section in his or her presence may detain the person in a reasonable manner for a reasonable length of time to deliver the person to a law enforcement officer or to the person's parent or guardian in the case of a minor. The detained person shall be promptly informed of the purpose of the detention and be permitted to make telephone calls, but shall not be interrogated or searched against his or her will before the arrival of a law enforcement officer who may conduct a lawful interrogation of the accused person. Compliance with this Section entitles the official, agent or employee effecting the detention to the same defense in any action as is available to a peace officer making an arrest in the line of duty.
- (e) **Damaging Material Prohibited.** No person shall mar, deface or in any other way damage or mutilate any book, periodical, pamphlet, picture or other article or property belonging to or in charge of the library. Any person convicted of violating this Subsection shall be subject to the penalties as set forth in Section 1-1-7.
- (f) **Return Demanded.** No person shall fail, on demand, to return any book periodical, pamphlet, picture or other articles or property belonging to or in charge of the Public Library according to the rules or regulations duly made and adopted by the Library Board and no person shall remove from the library any book, periodical, pamphlet, picture or other articles or property without first having it charged as provided by such rules and regulations. Any person convicted of violating any provision of this Subsection shall be subject to the penalties as set forth in Section 1-1-7.

*State Law Reference:* Sec. 943.61, Wis. Stats.

### **Sec. 11-3-5 Damage to Public Property.**

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

### **Sec. 11-3-6 Retail Theft.**

- (a) Whoever intentionally alters indicia of price or value of merchandise or takes and carries away, transfers, conceals or retains possession of merchandise held for resale by a merchant without consent and with intent to deprive the merchant permanently of possession or the full purchase price may be penalized as provided in Subsection (d).
- (b) The intentional concealment of unpurchased merchandise which continues from one floor to another or beyond the last station for receiving payments in a merchant's store is evidence of intent to deprive the merchant permanently of possession of such merchandise without paying the purchase price thereof. The discovery of unpurchased merchandise concealed upon the person or among the belongings of another is evidence of intentional concealment on the part of the person so concealing such goods.
- (c) A merchant or merchant's adult employee who has probable cause for believing that a person has violated this Section in his/her presence may detain such person in a reasonable manner for a reasonable length of time to deliver him/her to a law enforcement officer, or to his/her parent or guardian if a minor. The detained person must be promptly informed of the purpose for the detention and may make phone calls, but he/she shall not be interrogated or searched against his/her will before the arrival of a law enforcement officer who may conduct a lawful interrogation of the accused person. Compliance with this Subsection entitles the merchant or his/her employee affecting the detention to the same defense in any action as is available to a peace officer making an arrest in the line of duty.
- (d) If the value of the merchandise does not exceed One Hundred Dollars (\$100.00), any person violating this Section shall forfeit not more than One Thousand Dollars (\$1,000.00).

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If the value of the merchandise exceeds One Hundred Dollars (\$100.00), this Section shall not apply and the matter shall be referred to the District Attorney for criminal prosecution.

*State Law Reference:* Sec. 943.50, Wis. Stats.

**Sec. 11-3-7 Issuance of Worthless Checks.**

- (a) **Violations.** Whoever issues any check or other order for the payment of money less than One Thousand Dollars (\$1,000.00) which, at the time of issuance, he or she intends shall not be paid is guilty of a violation of this Section.
- (b) **Prima Facie Evidence.** Any of the following is prima facie evidence that the person at the time he or she issued the check or other order for payment of money intended it should not be paid:
  - (1) Proof that, at the time of issuance, the person did not have an account with the drawee; or
  - (2) Proof that, at the time of issuance, the person did not have sufficient funds or credit with the drawee and that the person failed within five (5) days after receiving notice of non-payment or dishonor to pay the check or other order; or
  - (3) Proof that, when presentment was made within a reasonable time, the person did not have sufficient funds or credit with the drawee and the person failed within five (5) days after receiving notice of non-payment or dishonor to pay the check or other order.
- (c) **Exceptions.** This Section does not apply to a post-dated check or to a check given in past consideration, except a payroll check.
- (d) **Returned Check Fee.** In the event a person issues a check to the City, and does not have sufficient funds or credit such that the check is returned unpaid, such person shall pay the check or other order and shall also pay a fee of Twenty Dollars (\$20.00), representing the cost of additional administrative expense which results from non-payment of the original obligation.
- (e) **Penalties.**
  - (1) In addition to any other penalties provided for under Section 1-1-7, a judge may order a violator of this Section to pay restitution to a victim. In determining the method of payment the Court shall consider the financial resources and future ability of the violator to pay. The court shall provide for payment of an amount equal to the pecuniary loss caused by the offense. Upon the application of an interested party, the Court shall schedule and hold an evidentiary hearing to determine the value of the victim's pecuniary loss resulting from the offense. A victim may not be compensated under this Section and under Sec. 943.245, Wis. Stats.
  - (2) In this Section, "pecuniary loss" means:
    - a. All special damages, but not general damages, substantiated by evidence in the record, which a person could recover against the violator in a civil action arising

out of the facts or events constituting the violator's criminal activities, including, without limitation because of enumeration, the money equivalent of loss resulting from property taken, destroyed, broken or otherwise harmed and out-of-pocket losses, such as medical expenses; and

- b. Reasonable out-of-pocket expenses incurred by the victim resulting from the filing of charges or cooperating in the investigation and prosecution of the offense.

### **Sec. 11-3-8 Trespass.**

- (a) **Trespass to Land.** No person shall enter or remain on any land after having been notified by the owner or occupant not to remain on the premises.
- (b) **Trespass Without Consent.** Without the consent of some person lawfully upon the premises, under circumstances tending to create or provoke a breach of the peace, it shall be unlawful for any person to intentionally:
  - (1) Enter any enclosed or cultivated or improved land of another; or
  - (2) Enter a structure of another. For the purposes of this Section the term "structure" shall be defined as including any building, dwelling or other man-made structure situated upon real property located in the City.

### **Sec. 11-3-9 Regulation of Smoking.**

- (a) **State Statute Adopted.** The provisions of Chapter 101.123, Wis. Stats., relating to the Regulation of Smoking and Clean Indoor Air, except provisions therein relating to penalties to be imposed, are hereby adopted by reference and made a part of this Section as is fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this Section. Any future amendment, revisions or modifications of the statutes incorporated herein are intended to be made a part of this Section.
- (b) **Smoking Prohibited Within or Upon All Buildings and Equipment Owned, Leased or Rented by the City.** In recognition of a need to protect the health and comfort of the public and City employees from the detrimental effects of smoking, pursuant to the authority granted to the City by Sec. 101.123(2)(c), Wis. Stats., smoking as defined by Sec. 101.123(1)(h), Wis. Stats., is hereby prohibited by any person within or upon all buildings and enclosed equipment owned, leased or rented by the City of Amery, except in designated areas.
- (c) **State Statutes Adopted.** The provisions contained in Sec. 120.12(20), Wis. Stats., regulating smoking on school premises are adopted by reference and made a part of this Section as though set forth in full.

## Sec. 11-3-10 Theft Prohibited.

- (a) **Acts.** Whoever does any of the following may be penalized as provided in Section 1-1-7 of this Code of Ordinances:
- (1) Intentionally takes and carries away, uses, transfers, conceals or retains possession of movable property of another without his/her consent and with intent to deprive the owner permanently of possession of such property.
  - (2) By virtue of his/her office, business or employment, or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of another, intentionally uses, transfers, conceals or retains possession of such money, security, instrument, paper or writing without the owner's consent, contrary to his/her authority, and with intent to convert to his/her own use or to the use of any other person except the owner. A refusal to deliver any money or a negotiable security, instrument, paper or other negotiable writing, which is in his/her possession or custody by virtue of his/her office, business or employment, or as trustee or bailee, upon demand of the person entitled to receive it, or as required by law, is prima facie evidence of an intent to convert to his/her own use within the meaning of this Subsection.
  - (3) Having a legal interest in movable property, intentionally and without consent, take such property out of the possession of the pledgee or such other person having a superior right of possession with intent thereby to deprive the pledgee or other person permanently of the possession of such property.
  - (4) Obtains title to property of another by intentionally deceiving him/her with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes a promise made with intent not to perform it if it is a part of a false and fraudulent scheme.
  - (5) Intentionally fails to return any personal property which is in his/her possession or under his/her control by virtue of a written lease or written rental agreement, within ten (10) days after the lease or rental agreement has expired.
- (b) **Definitions.** The following definitions shall be applicable in this Section:
- (1) **Property.** All forms of tangible property, whether real or personal, without limitation including electricity, gas and documents which represent or embody a choice in action or other intangible rights.
  - (2) **Movable Property.** Property whose physical location can be changed, without limitation, including electricity and gas, documents which represent or embody intangible rights, and things growing on or affixed to or found in land.
  - (3) **Value.** The market value at the time of the theft or the cost to the victim of replacing the property within the reasonable time after the theft, whichever is less, if the property stolen is a document evidencing a choice in action or other intangible right; value means either the market value of the chose in action or other right or the

intrinsic value of the document, whichever is greater. If the thief gave consideration for or had a legal interest in the stolen property, the amount of such consideration or value of such interest shall be deducted from the total value of the property.

- (4) **Property of Another.** Includes property in which the actor is a co-owner and property of a partnership of which the actor is a member unless the actor and the victim are husband and wife.

## Sec. 11-3-11 Fraud on Residential Landlords Prohibited.

- (a) **Prohibited Acts.** Any person who, with intent to defraud, does any of the following shall be guilty of violating this Section:
- (1) Intentionally absconds without paying rent that has been contractually agreed upon in an oral or written lease with a landlord. Prima facie evidence of intentionally absconding will be established if a tenant fails to pay rent due prior to the vacating of the rental premise by the tenant, and the non-payment of said rent continues for a period of five (5) days after vacation of the premise; or
  - (2) Issues any check, money order or any other form of bank or monetary draft as a payment of rent, where such document lacks sufficient funds, where the account is closed, or where such draft is unredeemable in any other form or fashion. Prima facie evidence of intention to defraud will be established if a tenant fails, within five (5) days of a written demand by the landlord or agent, to pay in full the total amount of the draft presented as rent payment plus any bank charges to the landlord attributable to the unredeemability of the draft.
- (b) **Applicability.** This Section shall apply to rental agreements between residential landlords and tenants only. The words and terms used in this Section shall be defined and construed in conformity with the provisions of Chapter AG 134, Wis. Adm. Code, Chapter 704, Wis. Stats., and Sec. 990.001(1), Wis. Stats. The act of service by a landlord of a legal eviction notice or notice to terminate tenancy shall not, in itself, act as a bar to prosecution under this Section.
- (c) **Procedure.** An officer may issue a citation only when the complainant provides the following:
- (1) The name and current address of the tenant, a copy of the subject lease agreement, or sworn testimony of the terms of the subject oral lease.
  - (2) The amount of rent due, the date it was due, the date the tenant actually vacated the premise, and testimony that the rent remained unpaid for not less than five (5) days after vacating and that the tenant did not notify or attempt to notify the complainant of the tenant's new address, or that the tenant knowingly gave the complainant a false address.
  - (3) As to an unredeemable payment, the document used for attempting rent payment, the written demand for payment of the full amount plus bank charges, proof that the

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tenant received the written demand, and testimony that at least five (5) days have elapsed since the demand was received and no payment has been made.

*State Law Reference:* Chapter 704 and Sec. 990.001(1), Wis. Stats.; Ch. AG 134, Wis. Adm. Code.

**Sec. 11-3-12 Graffiti.**

- (a) **Definition.** "Graffiti" is any drawing, figure, inscription, symbol, or other marking which is scratched, painted, drawn in pen or marker, or placed by some other permanent or semi-permanent means upon sidewalks, streets, public or private structures or any other place in public view without the express permission or consent of the property owner.
- (b) **Public Nuisance.** Graffiti is hereby declared to be a public nuisance, as defined under Title 11, Chapter 6 of this Code, affecting peace and safety.
- (c) **Prohibitions.** No person shall write, spray, scratch or otherwise affix graffiti upon any property whether private or public without the consent of the owner or owners of said property. Any person who shall affix graffiti to any property without the consent of the owner shall be liable for the costs of removing or covering such graffiti in addition to any fines imposed for violating this Section. The parents of any unemancipated minor child who affixed graffiti shall be held liable for the cost of removing or covering said graffiti in accordance with Sec. 895.035, Wis. Stats.
- (d) **Removal By Property Owner.**
  - (1) Every owner of a structure or property defaced by graffiti shall cover or remove the graffiti within fifteen (15) days in compliance with written notice served upon them by the Police Department to remove or cover such graffiti.
  - (2) In the event any owner fails to comply with the above-mentioned notice, the Police Department may have the graffiti covered or removed, and in such event, all costs, fees and expenses will be assessed to said owners real estate taxes pursuant to Sec. 66.0627, Wis. Stats.

**Sec. 11-3-13 Cemetery Regulations.**

- (a) **Purpose and Definition.** In order to protect cemetery areas within the City from injury, damage or desecration, these regulations are enacted. The term "cemetery" as hereinafter used in this Section shall include all cemetery property, grounds, equipment and structures, both privately and publicly owned, which are located within the City of Amery.
- (b) **Authority to Establish Rules and Regulations.** The cemetery property owner shall have the authority to establish reasonable rules and regulations to regulate and govern the operation of any cemetery in accordance with state law and this Code of Ordinances. The

cemetery property owner shall reserve the right to prohibit and regulate the planting or placement of any flowers, plants, vines, shrubs, trees, flower pots, urns or other objects on cemetery property. Placements of any such plantings, containers or objects shall be in accordance with established regulations of the cemetery property owner.

(c) **Specific Regulations.**

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

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

## Title 11 ► Chapter 4

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# Offenses Involving Alcoholic Beverages

<b>11-4-1</b>	Outside Consumption
<b>11-4-2</b>	Sale to Underage or Intoxicated Persons Restricted
<b>11-4-3</b>	Underage Persons' Presence in Places of Sale; Penalty
<b>11-4-4</b>	Underage Persons; Prohibitions; Penalties
<b>11-4-5</b>	Defense of Sellers
<b>11-4-6</b>	Persons Who Have Attained the Legal Drinking Age; False or Altered Identification Cards
<b>11-4-7</b>	Possession of Alcohol Beverages on School Grounds
<b>11-4-8</b>	Adult Permitting or Encouraging Underage Violation
<b>11-4-9</b>	Solicitation of Drinks Prohibited

### **Sec. 11-4-1 Outside Consumption.**

#### **(a) Alcoholic Beverages in Public Areas and Parks.**

##### **(1) Regulations.**

- a. It shall be unlawful for any person to sell, serve or give away, or offer to sell, serve or give away, any alcoholic beverage upon any public street, sidewalk, alley, public parking lot, highway, municipal building, library, cemetery or drives or other public area within the City of Amery or on private property without the owner's consent, except at licensed premises.
- b. It shall be unlawful for any person to consume or have in his/her possession any open container containing alcohol beverage upon any public street, public sidewalk, public way, municipal building, library, public alley or public parking lot within the City of Amery.
- c. It shall be unlawful for any person to consume or have in their possession, any alcohol beverage in any City park, except in:
  1. The pavilion and picnic area of North Park;
  2. The pavilion of Michael Riverfront Park;
  3. The tournament area at Soldiers Field;
  4. The pavilion, when erected, at York Park.

- (2) **Private Property Held Out For Public Use.** It shall be unlawful for any person to consume any alcohol beverages upon any private property held open for public use

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within the City unless the property is specifically named as being part of a licensed premises.

(3) **Exceptions.**

- a. The provisions of this Section may be waived by the Common Council for duly authorized events.
- b. Any organization which has been issued a Temporary Fermented Malt Beverage and/or Temporary Wine License for a designated area and event pursuant to this Code of Ordinances, provided that the provisions of this Chapter and Title 7, Chapter 2, are fully complied with.

(b) **Definitions.**

- (1) As used in this Section, the term "alcoholic beverage" shall include all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented, or not, and by whatever name called, as well as all liquors and liquids made by the alcoholic fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated or degerminated grains or sugar, which contain one-half (1/2) of one percent (1%) or more of alcohol by volume and which are fit for use for beverage purposes.
- (2) As used in this Section, the term "public area" shall be construed to mean any location within the City which is open to access to persons not requiring specific permission of the owner to be at such location including all parking lots serving commercial establishments.
- (3) As used in this Chapter "underage person" shall mean any person under the legal drinking age as defined by the Wisconsin Statutes.

*Cross-Reference:* Section 7-2-16.

## **Sec. 11-4-2 Sale to Underage or Intoxicated Persons Restricted.**

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

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

- (4) No adult may intentionally encourage or contribute to a violation of Subsection (a)(1) or (b).
- (b) **Penalties.** For purposes of determining previous violations, the thirty (30) month period shall be measured from the dates of violations that resulted in an imposition of a forfeiture or a conviction. For the purpose of determining whether or not a previous violation has occurred, if more than one (1) violation occurs at the same time, all those violations shall be counted as one (1) violation. A person who commits a violation of Subsection (a) above may be:
- (1) Required to forfeit not more than Five Hundred Dollars (\$500.00) if the person has not committed a previous violation within thirty (30) months of the violation; or
  - (2) Fined not more than Five Hundred Dollars (\$500.00) if the person has committed a previous violation within thirty (30) months of the violation.
  - (3) Fined not more than One Thousand Dollars (\$1,000.00) if the person has committed two (2) previous violations within thirty (30) months of the violation.
  - (4) Fined not more than Ten Thousand Dollars (\$10,000.00) if the person has committed three (3) or more previous violations within thirty (30) months of the violation.
  - (5) In addition to the forfeitures provided in Subsections (b)(1)-(4) above, a court shall suspend any license issued under this Chapter to a person violating this Subsection for:
    - a. Not more than three (3) days, if the court finds that the person committed a violation within twelve (12) months after committing one (1) previous violation;
    - b. Not less than three (3) days nor more than ten (10) days, if the court finds that the person committed a violation within twelve (12) months after committing two (2) other violations; or
    - c. Not less than fifteen (15) days nor more than thirty (30) days, if the court finds that the person committed the violation within twelve (12) months after committing three (3) other violations.
- (c) **Exception.** A person who holds a Class "A" license, a Class "B" license or permit, a "Class A" license or a "Class B" license or permit who commits a violation is subject to Subsection (b)(5) but is not subject to Subsection (b)(1)-(4) or Sec. 125.11, Wis. Stats.
- (d) **Sale of Alcohol Beverages to Intoxicated Persons.**
- (1) **Restrictions.**
    - a. No person may procure for, sell, dispense or give away alcohol beverages to a person who is intoxicated.
    - b. No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with a person who is intoxicated.
- (e) **Penalties.** Any person who violates Subsection (d)(1) above shall be subject to a forfeiture of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00).

*State Law Reference:* Section 125.07, Wis. Stats.

## **Sec. 11-4-3 Underage Persons' Presence in Places of Sale; Penalty.**

- (a) **Restrictions.** An underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age may not enter, knowingly attempt to enter, or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued for any purpose except the transaction of business pertaining to the licensed premises with or for the licensee or his or her employee. The business may not be amusement or the purchase, receiving or consumption of edibles or beverages or similar activities which normally constitute activities of a customer of the premises. This Subsection does not apply to:
- (1) An underage person who is a resident, employee, lodger or boarder on the premises controlled by the proprietor, licensee or permittee of which the licensed premises consists or is a part.
  - (2) An underage person who enters or is on a "Class A" or Class "A" premises for the purpose of purchasing other than alcohol beverages. An underage person so entering the premises may not remain on the premises after the purchase.
  - (3) Hotels, drug stores, grocery stores, bowling alleys, indoor golf simulator facilities, service stations, vessels, cars operated by any railroad, regularly established athletic fields, outdoor volleyball courts that are contiguous to a licensed premises, stadiums or public facilities as defined in Sec. 125.51(5)(b)1.d, Wis. Stats., which are owned by a county or municipality, or centers for the visual. or performing arts.
  - (4) Premises in the state fair park, concessions authorized on state-owned premises in the state parks and state forests as defined or designated in Chapters 27 and 28, Wis. Stats., and parks owned or operated by agricultural societies.
  - (5) Ski chalets, golf courses and golf clubhouses, racetracks licensed under Chapter 562, Wis. Stats., curling clubs, private soccer clubs and private tennis clubs.
  - (6) Premises operated under both a "Class B" or Class "B" license or permit and a restaurant permit where the principal business conducted is that of a restaurant. If the premises are operated under both a "Class B" or Class "B" license or permit and a restaurant permit, the principal business conducted is presumed to be the sale of alcohol beverages, but the presumption may be rebutted by competent evidence.
  - (7) Premises operating under both a "Class C" license and a restaurant permit.
  - (8) An underage person who enters or remains in a room on Class "B" or "Class B" licensed premises separate from any room where alcohol beverages are sold or served, if no alcohol beverages are furnished or consumed by any person in the room where the underage person is present and the presence of underage persons is authorized under this Subsection. (An underage person may enter and remain on Class "B" or "Class B" premises under this Subsection only if the City adopts an ordinance permitting underage persons to enter and remain on the premises as provided in this Subsection and the City Police Department issues to the Class "B" or "Class B"

licensee a written authorization permitting underage persons to be present under this Subsection on the date specified in the authorization. Before issuing the authorization, the City Police Department shall make a determination that the presence of underage persons on the licensed premises will not endanger their health, welfare or safety or that of other members of the City. The licensee shall obtain a separate authorization for each date on which underage persons will be present on the premises.)

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

#### **Sec. 11-4-4 Underage Persons; Prohibitions; Penalties.**

- (a) **Prohibitions.** Any underage person who does any of the following is guilty of a violation:
- (1) Procures or attempts to procure alcohol beverages from a licensee or permittee.
  - (2) Unless accompanied by a parent, guardian or spouse who has attained the legal drinking age, possesses or consumes alcohol beverages on licensed premises.
  - (3) Enters, knowingly attempts to enter or is on licensed premises in violation of Section 11-4-3(a).
  - (4) Falsely represents his or her age for the purpose of receiving alcohol beverages from a licensee or permittee.

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

- (1) For a first (1st) violation, a forfeiture of not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Dollars (\$200.00), suspension of the person's operating privilege as provided under Sec. 343.30(6)(b)1, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g), or any combination of these penalties.
  - (2) For a violation committed within twelve (12) months of a previous violation, either a forfeiture of not less than Two Hundred Dollars (\$200.00) nor more than Three Hundred Dollars (\$300.00), suspension of the person's operating privilege as provided under Sec. 343.30(6)(b)2, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g), or any combination of these penalties.
  - (3) For a violation committed within twelve (12) months of two (2) previous violations, either a forfeiture of not less than Three Hundred Dollars (\$300.00) nor more than Five Hundred Dollars (\$500.00), revocation of the person's operating privilege under Sec. 343.30(6)(b)3, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g), or any combination of these penalties.
  - (4) For a violation committed within twelve (12) months of three (3) or more previous violations, either a forfeiture of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), revocation of the person's operating privilege under Sec. 343.30(6)(b)3, Wis. Stats., participation in a supervised work program or other community service work under Subsection (g), or any combination of these penalties.
- (f) **Multiple Violations From an Incident.** For purposes of Subsections (a) or (b) above, all violations arising out of the same incident or occurrence shall be counted as a single violation.
- (g) **Work Programs.**
- (1) A supervised work program ordered under Subsections (d) or (e) above shall be administered by the county department under Sec. 46.215 or 46.22, Wis. Stats., or by a community agency approved by the court. The court shall set standards for the supervised work program within the budgetary limits established by the county board of supervisors. The supervised work program may provide the person with reasonable compensation reflecting the market value of the work performed or it may consist of uncompensated community service work. Community service work ordered under Subsection (d) or (e), other than community service work performed under a supervised work program, shall be administered by a public agency or nonprofit charitable organization approved by the court. The court may use any available resources, including any community service work program, in ordering the child to perform community service work under Subsection (d) or (e).
  - (2) The supervised work program or other community service work shall be of a constructive nature designed to promote the person's rehabilitation, shall be appropriate to the person's age level and physical ability and shall be combined with

counseling from a member of the staff of the county department, community agency, public agency or nonprofit charitable organization or other qualified person. The supervised work program or other community service work may not conflict with the person's regular attendance at school. The amount of work required shall be reasonably related to the seriousness of the person's offense.

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

defendant, notify the agency primarily responsible for providing services to the defendant that the defendant has complied with the order and the court shall notify the defendant of whether or not the penalty will be reinstated. If the court had ordered the suspension of the defendant's operating privilege under Subsection (d) or (e), the court may order the secretary of transportation to reinstate the operating privilege of the defendant if he or she completes the alcohol abuse treatment program or court-approved alcohol abuse education program.

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

## **Sec. 11-4-5 Defense of Sellers.**

- (a) **Defenses.** In determining whether or not a licensee or permittee has violated Sections 11-4-2(a) or 11-4-3(a), all relevant circumstances surrounding the presence of the underage person or the procuring, selling, dispensing or giving away of alcohol beverages maybe considered, including any circumstances listed below. In addition, proof of all of the following facts by a seller of alcohol beverages to an underage person is a defense to any prosecution for a violation of this Section:

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

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

- (1) Every retail alcohol beverage licensee or permittee may keep a book for the purposes of Subsection (a) above. The licensee or permittee or his or her employee may require any of the following persons to sign the book:
  - a. A person who has shown documentary proof that he or she has attained the legal drinking age if the person's age is in question.
  - b. A person who alleges that he or she is the underage person's parent, guardian or spouse and that he or she has attained the legal drinking age, if the licensee or

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permittee or his or her employee suspects that he or she is not the underage person's parent, guardian or spouse or that he or she has not attained the legal drinking age.

- (2) The book may show the date of the purchase of the alcohol beverage, the identification used in making the purchase or the identification used to establish that a person is an underage person's parent, guardian or spouse and has attained the legal drinking age, the address of the purchase and the purchaser's signature.

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

**Sec. 11-4-6 Persons Who Have Attained the Legal Drinking Age; False or Altered Identification Cards.**

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

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

**Sec. 11-4-7 Possession of Alcohol Beverages on School Grounds Prohibited.**

- (a) The following definitions shall be applicable in this Subsection:
  - (1) **Motor vehicle.** A motor vehicle owned, rented or consigned to a school.
  - (2) **School.** A public, parochial or private school which provides an educational program for one (1) or more grades between grades 1 and 12 and which is commonly known

as an elementary school, middle school, junior high school, senior high school or high school.

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

*Cross-Reference:* Section 11-6-5.

### **Sec. 11-4-8 Adult Permitting or Encouraging Underage Violation.**

- (a) No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the person or under the person's control. This Subsection does not apply to alcohol beverages used exclusively as part of a religious service.
- (b) No adult may intentionally encourage or contribute to a violation of Section 11-4-4(a) or (b).
- (c) A person who violates this Section is subject to a forfeiture of not more than Five Hundred Dollars (\$500.00).

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

### **Sec. 11-4-9 Solicitation of Drinks Prohibited.**

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



- (15) **Parking in Parks.** No person shall park any motor vehicle in any park in the City except in a designated parking area.
- (16) **Horse and Carriages.** No person shall ride a horse or drive a horse-driven vehicle in any park, except on roads or designated bridle paths, except when approval of the Common Council is first obtained. It shall be unlawful for any person to ride a horse or drive a horse-driven vehicle in a careless, negligent or reckless manner which may endanger the safety and well-being of others. Horseback riding shall be allowed only during the daylight hours. No person shall ride a horse which cannot be held under such control that it may be easily turned or stopped. No horse shall be ridden in a reckless manner. Pedestrians shall have the right-of-way when crossing a bridle path, and whenever groups of people are visible within three hundred (300) feet horses shall be ridden at slow gait.
- (17) **Removing Tree Protectors.** No person shall remove any device for the protection of trees or shrubs.
- (18) **Golfing and Sporting Activities.** No golfing or practicing golf in City parks or recreation areas shall be allowed except with the use of a whiffle ball. All sporting activities must be held in areas so designated for that purpose.
- (19) **Arrows.** No person shall use or shoot any bow and arrow in any City park, except in authorized areas.
- (20) **Fees and Charges.** The Common Council shall have the authority to establish such fees as deemed necessary for use of any park facility, shelter or land area. It shall be unlawful to use such areas without payment of such fee or charge when required.
- (21) **Firearms; Hunting.** Possessing or discharging of any firearm or weapon of any kind is prohibited in all City parks.
- (22) **Fish Cleaning.** Cleaning of fish in shelters, toilet facilities or picnic areas is prohibited in all City parks.
- (23) **Controlled Substances.** Possessing, using or dispensing of a controlled substance in violation of the Uniform Controlled Substances Act is prohibited in all City parks.
- (24) **Camping.** Overnight camping is not permitted in any City park.
- (25) **Commercial Enterprise.** No person shall sell, or offer for sale, any article, thing, privilege or service in any park without prior written permission from the Common Council.
- (26) **Posted Regulations.** In addition to the regulations herein contained and provided, the Common Council may post from time to time specific rules and regulations; and such specific rules and regulations shall be incorporated by reference in to this Chapter as fully as set forth herein.
- (27) **Tampering with Buoys.** Tampering with or disturbing any buoys or markers so placed in any public waters is prohibited.
- (28) **Restrooms and Washrooms.** No person shall fail to cooperate in maintaining restrooms and washrooms in a neat and sanitary condition. No person over the age

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of five (5) years shall use the restrooms and washrooms designated for the opposite sex.

- (29) **Loitering on Equipment Preventing Use.** No loitering is permitted on playground equipment so as to disrupt use by persons waiting to use such equipment.
- (30) **Responsibility for Equipment Damage.** Any person or persons causing any damage to property in the City park shall be punished and/or fined under the appropriate ordinance and be required to make full and complete restitution.
- (31) **Satellite Toilets; dumpsters.** It will be the obligation of civic organizations or other major park users to provide satellite toilets and extra garbage dumpsters during the time of celebrations or special events.
- (32) **Waste Disposal Restrictions.** No person shall dispose of any garbage, bottles, tin cans or any other solid waste material, including demolition material, in any City park where the waste is generated from outside of the City park property.
- (33) **Bicycle Restrictions.** No person shall ride a bicycle or skateboard or rollerblade in a reckless manner or ride in and around any bleacher area or shelter house areas. All bicycles will be placed in bicycle racks when unattended. No bicycles are permitted in any park building whether ridden or parked there for any reason.
- (34) **Picnic Areas.** No person in a park shall leave a picnic area before a fire in the said picnic area is completely extinguished and before all trash, garbage and other refuse in the said picnic area is placed in the disposal receptacles provided for that purpose.
- (35) **Alcohol Beverages in City Parks.** The possession and/or consumption of any alcohol beverage in City parks shall be as prescribed in Section 11-4-1.

*Cross-Reference:* Section 11-4-1(a).

### **Sec. 12-1-2 Radio-Controlled Model Airplanes Prohibited in Parks.**

No person shall fly a radio-controlled model airplane or helicopter in any park in the City of Amery except in areas specifically designated and posed for such purpose.

### **Sec. 12-1-3 Turf Protection on Public Property.**

Except as authorized by the Common Council, no person shall dig into the turf of any City-owned park property for any purposes whatsoever or remove any trees or flowers. Absent authorization by the Common Council, the use of metal detectors and digging for buried objects on City park property is prohibited.

### **Sec. 12-1-4 Park Hours.**

- (a) **Park Hours.** All grounds and facilities in the City park system, except the City Beach, shall be closed between 11:00 p.m. and 5:00 a.m. the following day.

## Title 11 ► Chapter 5

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### Offenses by Juveniles

<b>11-5-1</b>	Curfew
<b>11-5-2</b>	Possession of Controlled Substances by Juveniles
<b>11-5-3</b>	Petty Theft by Juveniles
<b>11-5-4</b>	Receiving Stolen Goods
<b>11-5-5</b>	City Jurisdiction Over Juveniles
<b>11-5-6</b>	Truancy; School Attendance
<b>11-5-7</b>	Unlawful Sheltering of Minors
<b>11-5-8</b>	Purchase or Possession of Tobacco Products
<b>11-5-9</b>	Smoking by Minors on Public Property
<b>11-5-10</b>	Criminal Gang Activity Prohibited
<b>11-5-11</b>	Enforcement and Penalties

#### **Sec. 11-5-1 Curfew.**

(a) **Curfew Established.**

- (1) It shall be unlawful for any juvenile under age sixteen (16) to be on foot, bicycle or in any type of vehicle on any type of vehicle on any public street, avenue, swimming area, highway, road, alley, park, school grounds, place of amusement and entertainment, cemetery, playground, public building or any other public place in the City of Amery 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.
- (2) The fact that said individual, unaccompanied by parent, legal guardian or other person having legal custody, is found upon any such public place during the aforementioned hours 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, legal guardian or person having lawful custody.

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- 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.
  - e. Who is in a public place because of an emergency.
- (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, legal guardian or other person having the lawful care, custody and control of any person under age sixteen (16) to allow or permit such person to violate the provisions of (a) or (b) above. 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 sixteen (16) to violate this Section.
- (d) **Detaining a Juvenile.** Pursuant to Chapter 938, Wis. Stats., law enforcement officers are hereby authorized to detain any juvenile violating the above provisions and other provisions in this Chapter until such time as the parent, legal guardian or person having legal custody of the juvenile shall be immediately notified and the person so notified shall as soon as reasonably possible thereafter report to the Police Department for the purpose of taking the custody of the juvenile and shall sign a release for him or her, or such juvenile may be taken directly from the scene of his/her apprehension to his/her home. If such juvenile's parents or relative living nearby cannot be contacted to take custody of such juvenile and it is determined by the apprehending officer that the juvenile's physical or mental condition is such as would require immediate attention, the law enforcement officer may make such necessary arrangements as may be necessary under the circumstances for the juvenile's welfare.
- (e) **Warning and Penalty.**
- (1) **Warning.** The first time a parent, legal guardian, or person having legal custody of a juvenile who is taken into custody by a law enforcement officer as provided in Subsection (d) above, such parent, legal guardian, or person having such legal custody shall be advised as to the provisions of this Section and further advised that any violation of this Section occurring thereafter by this juvenile or any other juvenile under his or her care or custody shall result in a penalty being imposed as hereinafter provided.
  - (2) **Penalty.** Any parent, legal guardian, or person having legal custody of a juvenile described in Subsection (a) above who has been warned in the manner provided in

Subsection (d)(1) herein and who thereafter violates this Section shall be subject to a penalty as provided in Section 1-1-7 of this Code of Ordinances. After a second violation within a six (6) month period, if the 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 court assigned to exercise jurisdiction under Chapter 938, Wis. Stats. Any juvenile under sixteen (16) years of age who shall violate this Section shall, upon conviction thereof, forfeit not less than One Dollar (\$1.00) nor more than Twenty-five Dollars (\$25.00), together with the costs of prosecution.

### **Sec. 11-5-2 Possession of Controlled Substances by Juveniles.**

It shall be unlawful for any juvenile to possess a controlled substance contrary to the Uniform Controlled Substances Act, Ch. 961, Wis. Stats.

### **Sec. 11-5-3 Petty Theft by Juveniles.**

It shall be unlawful for any juvenile with intent, to steal or take property from the person or presence of the owner without the owner's consent and with the intent to deprive the owner of the use thereof.

### **Sec. 11-5-4 Receiving Stolen Goods.**

It shall be unlawful for a person under the age of seventeen (17) to intentionally receive or conceal property he/she knows to be stolen.

### **Sec. 11-5-5 City Jurisdiction Over Juveniles.**

- (a) **Adoption of State Statutes.** Secs. 938.02, and 938.17(2), Wis. Stats., are hereby adopted and by reference made a part of this Section as if fully set forth herein.
- (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 Sec. 938.17(2), Wis. Stats., complaints alleging a violation of any provision of this Code of Ordinances against juveniles age 12 through 17 may be brought on behalf of the City of Amery and may be prosecuted utilizing the same procedures in such cases as are applicable to adults charged with the same offense.
- (d) **No Incarceration as Penalty.** The Court shall not impose incarceration as a penalty for any person convicted of an offense prosecuted under this Section.
- (e) **Additional Prohibited Acts.** In addition to any other provision of the City of Amery Code of Ordinances, no juvenile age 12 through 17 shall own, possess, ingest, buy, sell, trade, use as a beverage, give away or otherwise control any intoxicating liquor or fermented malt beverage in violation of Ch. 125, Wis. Stats.
- (f) **Penalty for Violations of Subsection (d).** Any juveniles age 12 through 17 who shall violate the provisions of Subsection (d) shall be subject to the same penalties as are provided in Section 1-1-7 of this Code of Ordinances exclusive of the provisions therein relative to commitment in the County Jail.

*Cross Reference:* Section 11-4-7.

## **Sec. 11-5-6 Truancy; School Attendance.**

- (a) **Definitions.** For the purpose of this Section, the following definitions shall be applicable:
  - (1) **Acceptable Excuse.** The meaning as defined in Sections 118.15 and 118.16(4), Wis. Stats.
  - (2) **Act of Commission or Omission.** Anything that contributes to the truancy of a juvenile, whether or not the juvenile is adjudged to be in need of protection or services, if the natural and probable consequences of that act would be to cause the child to be truant.
  - (3) **Dropout.** The meaning given in Sec. 118.153(1)(b), Wis. Stats.
  - (4) **Habitual Truant.** A pupil who is absent from school without an acceptable excuse under Sec. 118.15 and 118.16(4), Wis. Stats., for part of or all of five (5) or more days in which school is held during a school semester.
  - (5) **Truancy.** Any absence of part or all of one (1) or more days from school during which the school attendance officer, principal or teacher has not been notified of the legal cause of such absence by the parent or legal guardian of the absent pupil. Intermittent attendance carried on for the purpose of defeating the intent of Sec. 118.15, Wis. Stats., shall also be considering truancy.
  - (6) **Truant.** A pupil who is absent from school without an acceptable excuse under Sec. 118.15 and 118.16(4), Wis. Stats., for part or all of any day on which school is held during a school semester.

- (b) **Prohibition Against Habitual Truant.** Any person attending school in the City between the ages of six (6) and eighteen (18) years, subject to the exceptions found under Sec. 118.15, Wis. Stats., is prohibited from becoming a habitual truant as the term is defined in this Section. Any law enforcement officer in this City 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) **Truancy.** No person under eighteen (18) years of age shall be a truant from the school the person is supposed to be attending.
- (d) **Preconditions to Issuance of Citation.** Prior to the issuance of any citation, the district school Attendance Officer shall provide evidence to the Police Department that appropriate school personnel in the school in which the juvenile is enrolled has within the school year during which the truancy occurred:
- (1) Met with or attempted to meet with the juvenile's parent or legal guardian to discuss the juvenile's truancy.
  - (2) Provided an opportunity for educational counseling to the juvenile and considered curriculum modifications.
  - (3) Evaluated the juvenile to determine whether learning problems are the cause of the truancy and, if so, taken steps to overcome the learning problems.
  - (4) Conducted an evaluation to determine whether social problems are the cause of the juvenile's truancy and, if so, taken appropriate action or made appropriate referrals.
- (e) **Form of Citation.** Any citation issued 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.
- (f) **Habitual Truancy Disposition.** Upon a finding the juvenile is habitually truant pursuant to Sec. 118.163(1)(a) and 938.342(1g), Wis. Stats., and is in violation of Subsection (b) of this Section, the following dispositions are available to the Court:
- (1) **Suspension of Operating Privileges.** Suspend the juvenile's operating privileges as defined in Sec. 340.01(40), Wis. Stats., for not less than thirty (30) days nor more than three hundred sixty-five (365) days. The court 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 or a supervised work program under Secs. 938.342(1g)(b) and 938.34(5g), Wis. Stats. The costs of any such counseling, supervised work program or other community service work may be assessed against the person, the parents or guardian of the person, or both.
  - (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 set forth in Sec. 938.34(7d), Wis. Stats.
  - (5) **Revocation of Work Permits.** Order the Department of Workplace Development to revoke a work permit to the juvenile under Secs. 103.70 and 103.72, Wis. Stats.
  - (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 person and the community;
    - b. The person admits or pleads no contest to the allegations that the person was truant in open court with the person's parent, legal guardian or legal custodian present;
    - c. The person has not successfully completed participation in a teen court program during the two (2) years before the date of the alleged violation.
  - (7) **School Attendance Order.** Order the person to attend school.
  - (8) **Forfeiture.** Impose a forfeiture of not more than Five Hundred Dollars (\$500.00) plus costs, subject to Sec. 938.37, Wis. Stats. All or part of the forfeiture plus costs may be assessed against the person, the parent or guardian of the person, or both.
  - (9) **Other Conditions.** Order the person to comply with any other reasonable conditions that are consistent with this Subsection, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other juveniles or adults.
  - (10) **Supervision.** Place the person under formal or informal supervision, as described in Sec. 938.34(2), Wis. Stats., for up to one (1) year.
  - (11) **Parental Counseling.** The court may, in addition to or instead of the dispositions under Subsection (f)(1)–(10), order the person'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.
- (g) **Required School Attendance; Truancy Dispositions.**
- (1) **Violations.** Any person having under his/her control a juvenile who is between the ages of six (6) and eighteen (18), subject to the exceptions found in Sec. 118.15, Wis. Stats., shall cause the juvenile to attend school regularly during the full period and hours that the public or private school in which the juvenile shall be enrolled is in session until the end of the school term, quarter, or semester of the school year in which the juvenile becomes eighteen (18) years of age. If the Court finds that a person under eighteen (18) years of age violated this Subsection or Subsection (c) above, the Court shall enter an order making one or more of the following dispositions:
    - a. Order the person to attend school.
    - b. Impose a forfeiture of not more than Fifty Dollars (\$50.00) plus costs for a first violation, or a forfeiture of One Hundred Dollars (\$100.00) plus costs for any

second or subsequent violation committed within twelve (12) months of a previous violation, subject to Sec. 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 costs may be assessed against the person, the parents or guardian of the person, or both.

(2) **Exceptions.**

- a. A person will not be found in violation of this Subsection if that person can prove that he/she is unable to comply with the provisions of this Section because of the disobedience of the juvenile. The juvenile shall be referred to the Court assigned to exercise jurisdiction under Chapter 938, Wis. Stats.
- b. A person will not be found in violation of this Subsection if he/she has a juvenile under his/her control and the child has been sanctioned under Sec. 49.50(7)(h), Wis. Stats.

- (3) **Proof Required for Exacting a Penalty.** Before a person may be found guilty of violating this Section, the school attendance officer must present evidence to the Court that the activities under Sec. 118.16(5), Wis. Stats., have been completed by the school system. If that evidence has been presented to the Court and if the Court finds a person guilty of violating this Section, a forfeiture may be assessed as hereinafter provided.

(h) **Contributing to Truancy.**

- (1) Except as provided in Subsection (h)(2) below, any person eighteen (18) years of age or older, who, by an act or omission, knowingly encourages or contributes to the truancy, as defined in Subsection (h)(4), of a juvenile shall be subject to a forfeiture pursuant to Section 1-1-7.
- (2) Subsection (h)(1) above does not apply to a person who has under his or her control a juvenile who has been sanctioned under Sec. 49.26(1)(h), Wis. Stats.
- (3) An act or omission contributes to the truancy of a child, whether or not the juvenile is adjudged to be in need of protection or services, if the natural and probable consequences of that act or omission would be to cause the juvenile to be a truant.
- (4) "Truancy" means any absence of part or all of one (1) or more days from school during which the school attendance officer, principal or teacher has not been notified of the legal cause of such absence by the parent or legal guardian of the absent pupil, and also means intermittent attendance carried on for the purpose of defeating the intent of Sec. 118.15, Wis. Stats.

(i) **Parent or Legal Guardian Liability for Truancy.**

- (1) Unless the juvenile is excepted or excused under Sec. 118.15, Wis. Stats., or has graduated from high school, any person having under control a juvenile who is between the ages of six (6) and eighteen (18) years shall cause the juvenile to attend school regularly during the full period of hours, religious holidays excepted, that the

public or private school in which the juvenile should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the juvenile becomes eighteen (18) years of age.

- (2) a. A person found to have violated Subsection (i)(1) above, after evidence is provided by a school official that the activities under Sec. 118.16(5), Wis. Stats., have been completed, shall be subject to a forfeiture pursuant to Section 1-1-7.
- b. Subsection (i)(2)a above does not apply to a person who has under his or her control a juvenile who has been sanctioned under Sec. 49.26(1)(h), Wis. Stats., nor does it apply if the person proves that he or she is unable to comply with Subsection (i)(1) because of the disobedience of the juvenile.

(j) **Dropouts.**

- (1) **Prohibition.** No person under the age of eighteen (18) shall be a dropout.
- (2) **Disposition.** The Court may suspend the operating privilege of a person who is at least sixteen (16) years of age but less than eighteen (18) years of age and is a dropout. The Court may suspend the person's operating privilege 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 together with a notice stating the reason for and the duration of the suspension.
- (3) **Order to School District.** The Municipal Court may order the School District of Amery to provide to the Court a list of all persons who are known to the School District to be dropouts and who reside within the City of Amery.

- (k) **Municipal Court Powers.** The Municipal Court may exercise any power or authority granted to municipal courts under Ch. 118 or Ch. 938, Wis. Stats., concerning truants, habitual truants, dropouts or school districts. Any such power or authority of the Court shall also be granted pursuant to this Code of Ordinances, by reference.

## **Sec. 11-5-7 Unlawful Sheltering of Minors.**

- (a) No person shall intentionally shelter or conceal a minor child who:
  - (1) Is a "runaway child", meaning a child who has run away from his or her parent, legal guardian or legal or physical custodian; or
  - (2) Is a child who may be taken into custody pursuant to Sec. 938.19, Wis. Stats.
- (b) Subsection (a) applies when the following conditions are present:
  - (1) The person knows or should have known that the child is a child described in either Subsection (a)(1) or (a)(2); and
  - (2) The child has been reported to a law enforcement agency as a missing person or as a child described in Subsection (a)(1) or (a)(2).
- (c) Subsection (a) does not apply to any of the following:
  - (1) A person operating a runaway home in compliance with Sec. 48.227, Wis. Stats.; or

- (2) A person who shelters or conceals a child at the request or with the consent of the child's parent, legal guardian or legal or physical custodian except if the sheltering or concealment violates Sec. 946.71 or 946.715, Wis. Stats.; or
- (3) A person who immediately notifies a law enforcement agency, county department of public welfare or social services, or the intake worker of the court exercising jurisdiction under Ch. 938, Wis. Stats., that he or she is sheltering or concealing such child and provides the person or agency notified with all information requested.

## **Sec. 11-5-8 Purchase or Possession of Tobacco Products.**

- (a) **Definition of Tobacco Products.** For the purposes of this Section, "tobacco products" means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.
- (b) **Prohibition Against Sale of or Availability of Cigarettes and Tobacco Products.**
  - (1) **Prohibition.** It shall be a violation of this Section for any retailer to sell or give cigarettes or tobacco products to any person under the age of eighteen (18) except as provided in Sec. 938.983(3), Wis. Stats. A vending machine operator is not liable for the purchase of cigarettes or tobacco products from his/her vending machine by a person under eighteen (18) years of age if the vending machine operator was unaware of the purchase.
  - (2) **Vending Machine Requirements.** The maintenance or keeping by retailers of vending machines dispensing cigarettes or tobacco products within the City of Amery limits shall be in strict conformity with the requirements of Sec. 134.66(2)(c), Wis. Stats., the provisions of which are incorporated herein by reference.
  - (3) **Vending Machine Placement.** No retailer shall place a vending machine dispensing cigarettes or tobacco products within five hundred (500) feet of any school. The operator of any such vending machine which is located within five hundred (500) feet of a school as of the effective date of this Section and which is so placed pursuant to a written agreement binding upon the vending machine operator may leave it there subject to the requirement, however, that he/she shall cause said vending machine(s) to be removed no later than May 1, 1993, or the date of expiration of the written agreement related thereto, whichever occurs first.
  - (4) **Restrictions on Manufacturers.** No manufacturer, distributor, jobber, sub-jobber, or retailer, or their employees or agents, may provide cigarettes or tobacco products for nominal or no consideration to any person under the age of eighteen (18).
  - (5) **Notice Requirements.** Retailers and vending machine operators shall comply with the posting and notice requirements set forth at Sec. 134.66(2)(b), Wis. Stats.
  - (6) **Conformity With State Law.** It is the intention of the City that this Subsection shall conform strictly with Sec. 134.66(2)(a), (c), (cm) and (d), Wis. Stats. Should any

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provision herein set forth fail to meet with this qualification upon court review, the offending provision shall be considered to be severed from the remainder of this Section, which shall remain in full force and effect as if the offending provision were never adopted.

(c) **Prohibition Against Use and Purchase of Cigarettes and Tobacco Products to Persons Under the Age of Eighteen (18) Years.**

- (1) **Definitions.** The definitions set forth at Sec. 938.983(1), Wis. Stats., are incorporated herein by reference.
- (2) **Purchase Prohibitions.** No person under the age of eighteen (18) years may do any of the following:
  - a. Buy or attempt to buy any cigarette or tobacco product, except in accord with Sec. 938.983(3), Wis. Stats.
  - b. Falsely represent his or her age for the purpose of receiving any cigarette or tobacco product.
  - c. Possess any cigarette or tobacco product.
- (3) **Seizure of Tobacco Product.** A law enforcement officer in whose presence a violation of Subsection (c)(2) occurs shall seize any cigarette or tobacco product involved therein.
- (4) **Conformity With State Law.** It is the intention of the City that this Subsection shall conform strictly with Secs. 938.983 and 134.66, Wis. Stats. Should any provision herein set forth fail to meet with this qualification upon court review, the offending provision shall be considered to be severed from the remainder of this Section, which shall remain in full force and effect as if the offending provision were never adopted.
- (5) **Sale Exemption.** 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/her working hours if employed by a retailer licensed under Sec. 134.65(1), Wis. Stats.

*State Law Reference:* Secs. 134.66, 778.25(1)(a) and 938.983, Wis. Stats.

**Sec. 11-5-9 Smoking by Minors on Public Property.**

No person under the age of eighteen (18) years shall carry or possess a lighted cigar, cigarette, pipe, or any other lighted smoking equipment or tobacco product restricted by state law on public property within five hundred (500) feet of a school grounds within the City of Amery.

**Sec. 11-5-10 Criminal Gang Activity Prohibited.**

- (a) **Authority.** This Section is adopted pursuant to the authority granted by Sec. 66.051 and Chapter 938, Wis. Stats.

- (b) **Definitions.** For purposes of this Section, the following terms are defined:
- (1) **Criminal Gang** means an ongoing organization, association or group of three (3) or more persons, whether formal or informal, that has as one of its primary activities, the commission of one (1) or more criminal or unlawful acts, or acts that would be criminal or unlawful if the actor were an adult, specified in Sec. 939.22(21)(a) to (s), Wis. Stats., or in any of the Municipal Code sections referred to in Subsection (b)(2) below; that has a common name or common identifying sign or symbol and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.
  - (2) **Pattern of Criminal Gang Activity** has the same meaning as the definition in Sec. 939.22(21), Wis. Stats., the list of offenses in Subsections (a) to (s) of that Section to Title 11 of this Code of Ordinances.
  - (3) **Unlawful Act** includes a violation of any of the Municipal Code sections referred to in Subsection (b)(2) above or any criminal act or act that would be criminal if the actor were an adult.
- (c) **Unlawful Activity.**
- (1) It is unlawful for any person to engage in criminal gang activity.
  - (2) It is unlawful for any person to solicit or attempt to solicit a person who has not attained the age of eighteen (18) years, to commit or attempt to commit any violation of the provisions of this Section, or any one (1) or more of those sections of the Municipal Code referred to in Subsection (b)(2) above.
  - (3) It is unlawful for any person to solicit or attempt to solicit a person who has not attained the age of eighteen (18) years, to participate in criminal gang activity.
  - (4) It is unlawful for any person to solicit or attempt to solicit a person who has not attained the age of eighteen (18) years, to join a criminal gang.

## Sec. 11-5-11 Enforcement and Penalties.

- (a) **Citation Process.** For violations of Sections 11-5-2 through 11-5-10, juveniles may be cited by the citation process on a form approved by the City Attorney and shall contain on the reverse side the penalties that the juvenile may receive simultaneously with issuing the citation to the juvenile. A carbon copy will be mailed to the parent or legal guardian.
- (b) **Penalties.** Violations of Sections 11-5-2 through 11-5-11 by a person under the age of eighteen (18) shall be punishable according to Section 1-1-7 of this Code of Ordinances and Sections 938.17(2), 938.343, 938.344 and 938.345, 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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## Public Nuisances

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### **Sec. 11-6-1 Public Nuisances Prohibited.**

No person shall erect, create, cause, continue, maintain or permit to exist any public nuisance within the City of Amery. Any person who shall cause, create or maintain a nuisance, or who shall, in any way, aid or contribute to the causing, creating or maintenance thereof, shall be guilty of a violation of this Section and shall be liable for all costs and expenses attendant upon the removal and correction of such a nuisance and to the penalty provided in Sec. 1-1-7.

### **Sec. 11-6-2 Definitions.**

As used in this Chapter:

- (a) **Public Nuisance.** A thing, act, occupation, condition or use of property which shall continue for such length of time as to:
- (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;
  - (2) In any way render the public insecure in life or in the use of property;
  - (3) Greatly offend the public morals or decency;
  - (4) 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.
- (b) **Human Health Hazard.** A substance, activity or condition that is known to have the potential to cause acute or chronic illness or death if exposure to the substance, activity or condition is not abated.

- (c) **Immediate Human Health Hazard.** A condition that exists, or has the potential to exist, which should, in the opinion of City enforcement officials or other authorities, be abated or corrected immediately, or at least within a twenty-four (24) hour period, to prevent possible severe damage to human health or the environment.
- (d) **Pollution.** The contaminating or rendering unclean or impure the air, land or waters in the City, or making the same injurious to public health, harmful for commercial or recreational use or deleterious to fish, bird, animal or plant life.
- (e) **Toxic and Hazardous Materials.** Any chemical or biological material that is stored, used or disposed of in such quantity or manner that it is or has the potential to create a public health hazard.

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

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

- (a) **Adulterated Food.** All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.
- (b) **Unburied Carcasses.** Carcasses of animals, birds or fowl not intended for human consumption or foods which are not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death.
- (c) **Breeding Places for Vermin, Etc.** Accumulations of decayed animal or vegetable matter, 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) **Noxious Weeds.** All 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, fertilizers and toxic pesticides, or other substances harmful to human beings.
- (h) **Noxious Odors, Etc.** Any use of property, substances or things within the City emitting 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 City.
- (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 City.

- (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 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.
- (m) **Animal Waste.** Accumulations of the bodily waste from all domestic animals and fowl that are handled, stored or disposed of in a manner that creates a health hazard to any persons within the City.
- (n) **Toxic and Hazardous Materials.** Any chemical and/or biological material that is stored, used or disposed of in such quantity or manner that it is or has the potential to create a public health hazard.
- (o) **Wastewater.** The presence of wastewater or sewage effluent from buildings on the ground surface, backing up into the building and/or running into a surface water body caused by a damaged, malfunctioning, improperly constructed or inadequately maintained private on-site waste disposal system or private sewage lateral connected to a public sewer system. Also any wastewater or sewage effluent that is not handled and disposed of in compliance with applicable City, county and/or State codes.
- (p) **Hazardous Conditions.** All open and unguarded pits, wells, excavations, or unused basements freely accessible from any public street, alley, or sidewalk.
- (q) **Groundwater Pollution.** Addition of any chemical or biological substance that would cause groundwater to be unpalatable or unfit for human consumption. These substances include, but are not limited to, the chemical and/or biological substances listed in Ch. NR 809, Wis. Adm. Code, titled, "Safe Drinking Water".

#### **Sec. 11-6-4 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 11-6-2:

- (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, promiscuous sexual intercourse 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 permit or license as provided for the ordinances of the City.

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- (d) **Continuous Violation of City Ordinances.** Any place or premises within the City where City ordinances or state laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.
- (e) **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 City.

**Sec. 11-6-5 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 11-6-2:

- (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 City relating to materials and manner of construction of buildings and structures within the City.
- (c) **Unauthorized Traffic Signs.** All unauthorized signs, signals, markings or devices placed 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, because of its color, location, brilliance or manner of operation, interferes with the effectiveness of any such device, 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 ten (10) 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 and Ordinances of the City.
- (h) **Dilapidated Buildings.** All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.
- (i) **Wires Over Streets.** All wires over streets, alleys or public grounds which are strung less than fifteen (15) 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

- greatly annoy or disturb a neighborhood or any considerable number of persons within the City.
- (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 City 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 from which the doors and other covers have not been removed or which are not equipped with a device for opening from the inside.
  - (n) **Flammable Liquids.** Repeated or continuous violations of the ordinances of the City or laws of the State relating to the storage of flammable liquids.
  - (o) **Unremoved Snow.** All snow and ice not removed shall be sprinkled with sand or other chemical removers, as provided in this Code.

*Cross-Reference:* Title 11, Chapter 8 Noise Control

## **Sec. 11-6-6 Abatement of Public Nuisances.**

- (a) **Coordination With State and County Agencies.** Where nuisances, as specified in Sections 11-6-2 through 11-6-5 involve a noncompliance with a State enforced Administrative Code, the City enforcement authority shall coordinate and/or refer this matter to the appropriate State agency for abatement and/or correction. If the nuisance continues without adequate enforcement from the State agency to cause its abatement and/or correction, then City officials may initiate action under this to bring about abatement and/or correction in coordination with other county and/or State enforcement agencies.
- (b) **Summary Abatement.**
  - (1) **Notice to Owner.** If the inspecting officer determines that a public nuisance exists within the City and that there is a danger of public health, safety, peace, morals or decency, notice may be served by the inspecting officer or an authorized deputy on the person causing, maintaining or permitting such nuisance or on the owner or occupant of the premises where such nuisance is caused, maintained or permitted; and a copy of such notice shall be posted on the premises. Such notice shall direct the person causing, maintaining or permitting such nuisance, or the owner or occupant of the premises, to abate or remove such nuisance within a period not less than twenty-four (24) hours or greater than seven (7) days and shall state that unless such nuisance is so abated, the City will cause the same to be abated and will charge the cost thereof

to the owner, occupant or person causing, maintaining or permitting the nuisance, as the case may be.

- (2) **Abatement by City.** If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the officer having the duty of enforcement shall cause the abatement or removal of such public nuisance.
- (c) **Abatement by Court Action.** If the inspecting officer determines that a public nuisance exists on private premises, but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals or decency, the inspector shall file a written report of such findings with the Mayor who, upon direction of the Common Council, shall cause an action to abate such nuisance to be commenced in the name of the City in Polk County Circuit Court in accordance with the provisions of Chapter 823, Wis. Stats.
- (d) **Court Order.** Except where necessary under Subsection (a), no officer hereunder shall use force to obtain access to private property to abate a public nuisance, but shall request permission to enter upon private property if such premises are occupied and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.
- (e) **Other Methods Not Excluded.** Nothing in this Chapter shall be construed as prohibiting the abatement of public nuisances by the City or its officials in accordance with the laws of the State of Wisconsin.

### **Sec. 11-6-7 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 City shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance, such cost shall be assessed against the real estate as a special charge.

### **Sec. 11-6-8 Enforcement; Penalty.**

- (a) **Enforcement.** The Chief of Police, Fire Inspector, Director of Public Works, Building Inspector and/or other pertinent enforcement authorities shall enforce those provisions of this Chapter that come within the jurisdiction of their offices, and they shall make periodic inspections and inspections upon complaint to insure that such provisions are not violated. No action shall be taken under Section 11-6-6 to abate a public nuisance unless the official has inspected or caused to be inspected the premises where the nuisance is alleged to exist and is satisfied that a nuisance does, in fact, exist.
- (b) **General Penalty.** Any person who shall violate any provision of this Chapter shall be subject to a penalty as provided in Section 1-1-7.

## Title 11 ► Chapter 7

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# Regulation of Lewd and Sexually Explicit Conduct

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## Article A: Introduction

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### **Sec. 11-7-1 Statement of Findings and Intent.**

- (a) **Intent.** It is the intent of this Chapter to regulate sexually oriented businesses and related activities to promote the health, safety and general welfare of the citizens of the City of Amery and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to this intended market. Neither is it the intent nor effect of this Chapter to condone or legitimize the distribution of obscene materials.
- (b) **Findings.**
- (1) It is a lawful purpose of the Common Council to enact rules and regulations as are necessary for the preservation of health and to prevent the spread of AIDS and other communicable or sexually transmitted diseases in the City of Amery. It has been found by localities through the State of Wisconsin, particularly Milwaukee, Racine, Waukesha, Delafield, Kenosha and West Allis, as well as communities around the country, including Indianapolis, Indiana; Austin, Texas; Chattanooga, Tennessee; Newport News, Virginia; Marion County, Indiana; Detroit, Michigan; and Seattle, Washington; as well as other communities around the country, that sexually oriented adult entertainment establishments are predisposed to the creation of unsafe and unsanitary conditions; that operators and employees of such businesses tend to participate in sex-related offenses on the premises, creating substantial law enforcement problems, and that the operational characteristics of such businesses have a deleterious effect on surrounding areas, resulting in neighborhood blight and reduced property values, especially when such businesses are concentrated in one (1) area. Many of such establishments install movie viewing booths with doors in which patrons view videotapes, movies, films and other forms of entertainment characterized by their emphasis on depicting, describing or relating to specified sexual activities or specified anatomical areas, and that such booths have been and are being used by patrons to engage in sexual acts resulting in unsanitary, unhealthy and unsafe conditions in said booths and establishments. This Chapter is intended to establish standards in order to prevent the spread of AIDS and other communicable or sexually transmitted diseases, and to eliminate the deleterious effects described above in the City of Amery.

- (2) The Common Council recognizes that "Class B" licensed premises are the most likely location to conduct a live nude dancing business and that this sexually oriented adult entertainment activity could lead to the exploitation of human sexuality. Such exploitation takes the form of employing or permitting persons to perform or exhibit their nude or semi-nude bodies to other patrons as an inducement to the patrons to purchase alcohol beverages. The result of such exploitation is both direct and secondary criminal activity, moral degradation and disturbance of the peace and good order of the community. In addition, this commercial exploitation of such nude and semi-nude acts is adverse to the public's interest in the quality of life, commercial activity and total community environment of the City of Amery.
  - (3) The Common Council also recognizes that it lacks authority to regulate obscenity in light of Sec. 66.051(3), Wis. Stats., and does not intend by adopting this Chapter to regulate obscenity, since nudity in and of itself is not obscene; it declares its intent to enact an ordinance addressing the secondary effects of live, totally nude, non-obscene, erotic dancing in bars or taverns.
  - (4) Based on evidence concerning the adverse secondary effects of adult uses on communities stated above, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); and *Barnes V. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, (1986); *California v. LaRue*, 409 U.S. 109 (1972); *Iacobucci v. City of Newport, Ky.*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U.S. 367 (1968); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Key, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); and *South Florida Free Beaches, Inc. v. City of Miami*, 734 F.2d 608 (11th Cir. 1984), and findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the Common Council finds that:
    - a. Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located.
    - b. Studies of the relationship between sexually oriented businesses and neighborhood property values have found a negative impact on both residential and commercial property values.
    - c. Sexually oriented businesses may contribute to an increased public health risk through the spread of sexually transmitted diseases.
- (c) **Exemptions.** The provisions of this Chapter do not apply to the following establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic, social or political merit are offered on a regular basis; and in which the predominant business or attraction is not the offering of entertainment which is intended for the sexual interests or titillation of customers; and

where the establishment is not distinguished by an emphasis on or the advertising or promotion of nude or semi-nude performances. While expressive live nudity may occur within these establishments, this Chapter seeks only to minimize and prevent the secondary effects of adult oriented establishments or sexually oriented businesses on the community. Negative secondary effects have not been associated with these establishments.

## Sec. 11-7-2 Definitions.

The following definitions are applicable in this Chapter:

- (a) **Adult Arcade.** Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."
- (b) **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 as defined in this Article.
- (c) **Adult Body Painting Studio.** An establishment or business wherein patrons are afforded an opportunity to paint images on a body which is wholly or partially nude. For purposes of this Chapter, an adult body painting studio shall not be deemed to include a tattoo parlor.
- (d) **Adult Bookstore or Adult Video Store.** An establishment having as a substantial or significant portion of its stock and trade in books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined herein. This includes an establishment having as its stock in trade, for sale, rent, trade, lease, inspection or viewing books, films, video cassettes, motion pictures, magazines or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specific sexual activities or specified anatomical areas, and in conjunction therewith have facilities for the presentation of adult entertainment, including adult-oriented videotapes, films, motion pictures or other offered entertainment for observation by patrons therein. This also includes a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

**NOTE:** A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an "adult

bookstore" or "adult video store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas." A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

- (e) **Adult Cabaret.** A nightclub, dance hall, bar, restaurant, or similar commercial establishment that regularly features:
  - (1) Persons who appear in a state of nudity or semi-nudity; or
  - (2) Live performances that are characterized by "specified sexual activities"; or
  - (3) Films, motion pictures, videocassettes, slides, or other photographic or computer reproductions or depictions that are characterized by the depiction or description of "specified sexual activities" or "nudity".
- (f) **Adult Entertainment.** Any exhibition of any motion pictures, live performance, display or dance of any type, which has a significant or substantial portion of such performance or is distinguished or characterized by an emphasis on, any actual or simulated performance of specified sexual activities, or exhibition and viewing of specified anatomical areas, as defined herein, appearing unclothed, or the removal of articles of clothing to reveal specified anatomical areas.
- (g) **Adult Mini-Motion Picture Theater.** An enclosed building with a capacity for less than fifty (50) patrons, including establishments that have coin operated video or motion picture booths, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined herein for observation by patrons therein.
- (h) **Adult Modeling Studio.** An establishment or business which provides the services of modeling for the purpose of reproducing the human body wholly or partially nude by means of photography, painting, sketching, drawing or otherwise.
- (i) **Adult Motel.** A hotel, motel, or similar commercial establishment which:
  - (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and which may have a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or
  - (2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
  - (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- (j) **Adult Motion Picture Theater.** An enclosed building with a capacity of fifty (50) or more persons at which a significant or substantial portion of the material presented is distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined herein for observation by patrons therein.

- (k) **Adult Motion Picture Theater (Outdoor).** A parcel of land from which individuals may view a motion picture presented out of doors which presents material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activity or specified anatomical areas, as defined herein, for observation by patrons.
- (l) **Adult Novelty Shop.** An establishment or business having as a substantial or significant portion of its stock and trade in novelty or other items which are distinguished or characterized by their emphasis on, or designed for, specified sexual activities or specified anatomical areas, as defined herein, or stimulating such activity.
- (m) **Adult Oriented or Sexually Oriented Establishment.** An establishment which includes, but is not limited to, adult bookstores, adult motion picture theaters, adult mini-motion theaters, adult theaters, adult bath houses, adult body painting studios, adult motels, adult novelty shops or adult cabarets, sexual encounter centers, sexually-oriented businesses, escort agencies, establishments featuring live sexually explicit performances, and further means any premises to which public patrons or members are invited or admitted and which are so physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common area of the premises for the purposes of viewing adult oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, whether or not such adult entertainment is held, conducted, operated or maintained for profit, direct or indirect. An adult oriented establishment further includes, without being limited to, any adult entertainment studio or any premises that is physically arranged and used as such whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.
- (n) **Adult Theater.** A theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are characterized by the "exposure of specified anatomical areas" or by "specified sexual activities."
- (o) **Booth, Room or Cubicle.** Such enclosures as are specifically offered to the public or members of an adult oriented establishment for hire or for a fee as part of a business operated on the premises which offers as part of its business the entertainment to be viewed within the enclosure; which shall include, without limitation, such enclosures wherein the entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure. However, booth, room, or cubicle does not mean such enclosures that are private offices used by the owners, managers or persons employed on the premises for attending to the tasks of their employment, which enclosures are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing entertainment for a fee, and are not open to any persons other than employees; nor shall this definition apply to hotels, motels or other similar establishments licensed by the State of Wisconsin pursuant to Chapter 50, Wis. Stats.
- (p) **Breast.** A portion of the human female mammary gland (commonly referred to as the female breast) including the nipple and the areola (the darker colored area of the breast surrounding the nipple) and an outside area of such gland wherein such outside area is:

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- (1) Reasonably compact and contiguous to the areola; and
- (2) Contains at least the nipple and the areola and one-fourth (1/4) of the outside surface area of such gland.

(q) **Buttocks.** (For a short general description see the last sentence of this Subsection). The area at the rear of the human body (sometimes referred to as the gluteus maximus) which lies between two (2) imaginary straight lines running parallel to the ground when a person is standing, the first or top such line being one-half (1/2) below the top of the vertical cleavage of the nates (i.e., the prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom such line being one-half (1/2) inch above the lowest point of the curvature of the fleshy protuberance (sometimes referred to as the gluteal fold), and between two (2) imaginary straight lines, one on each side of the body (the "outside line"), which outside lines are perpendicular to the ground and to the horizontal lines described above and which perpendicular outside lines pass through the outermost point(s) at which each nate meets the outer side of each leg. Notwithstanding the above, buttocks shall not include the leg, the hamstring muscle below the gluteal fold, the tensor fasciae latae muscle or any of the above-described portion of the human body that is between either:

- (1) The left inside perpendicular line and the left outside perpendicular line; or
- (2) The right inside perpendicular line and the right outside perpendicular line.

For the purpose of the previous sentence the left inside perpendicular line shall be an imaginary straight line on the left side of the anus:

- (1) That is perpendicular to the ground and to the horizontal lines described above; and
- (2) That is one-third (1/3) of the distance from the anus to the left outside line; and

The right inside perpendicular line shall be an imaginary straight line on the right side of the anus:

- (1) That is perpendicular to the ground and to the horizontal lines described above; and
- (2) That is one-third (1/3) of the distance from the anus to the left outside line; and

The right inside perpendicular line shall be an imaginary straight line on the right side of the anus:

- (1) That is perpendicular to the ground and to the horizontal lines described above; and
- (2) That is one-third (1/3) of the distance from the anus to the right outside line. (The above description can generally be described as covering one-third (1/3) of the buttocks centered over the cleavage for the length of the cleavage.)

(r) **Church.** A building whether situated within the City or not, in which persons regularly assemble for religious worship intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

(s) **Customer.** Any person who:

- (1) Is allowed to enter an adult oriented establishment in return for the payment of an admission fee or any other form of consideration or gratuity; or
- (2) Enters an adult oriented business and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or

- (3) Is a member of and on the premises of an adult oriented establishment operating as a private club.
- (t) **Community.** The State of Wisconsin.
- (u) **Day Care Center.** A facility licensed by the State of Wisconsin pursuant to Sec. 48.65, Wis. Stats., whether situated within the City or not.
- (v) **Door, Curtain or Portal Partition.** A nontransparent closure device which prevents activity taking place within a booth, room or cubicle from being seen or viewed from outside the booth, room or cubicle.
- (w) **Employee.** Any and all persons, including independent contractors, who work in or at or render any services directly or indirectly related to the operation of an adult oriented establishment.
- (x) **Entertainer.** Any person who provides entertainment within an adult oriented establishment as defined in this Chapter, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or independent contractor, including:
- (1) Any person who appears in a state of nudity or semi-nudity in a sexually oriented business; or
  - (2) Any person who engages in live performances that are characterized by "specified sexual activities".
- (y) **Escort.** A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (z) **Escort Agency.** A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
- (aa) **Establishment.** Includes any of the following:
- (1) The opening or commencement of any sexually oriented business as a new business;
  - (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
  - (3) The additions of any sexually oriented business to any other existing sexually oriented business; or
  - (4) The relocation of any sexually oriented business; or
  - (5) A sexually oriented business or premises on which the sexually oriented business is located.
- (bb) **Harmful to Minors.** That quality of any description or representation, in whatever form, of nudity, specified sexual activities or specified anatomical areas, which taken as a whole appeals to the prurient interest in sex, which taken as a whole portrays sexual conduct in a patently offensive way, and which taken as a whole does not have serious literary, artistic, political or scientific value. Whether a work appeals to the prurient interest and whether it depicts or describes sexual conduct in a patently offensive way, and whether it has

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serious literary, artistic, political or scientific value are to be determined by applying contemporary community standards in the adult community as a whole with respect to what is suitable material for minors.

- (cc) **Knowingly.** Having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:
  - (1) The character and content of any material described herein which is reasonably suspect under this Section; and
  - (2) The age of a minor, provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.
- (dd) **Knowledge of Minor's Age.** Means:
  - (1) Knowledge or information that the person is a minor; and
  - (2) Reason to know, or a belief or grounds for belief, which warrants further inspection or inquiry of the age of the minor.
- (ee) **Manager.** The operator or agent licensed under this Chapter who shall not be licensed as a massage technician.
- (ff) **Massage.** 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 for consideration.
- (gg) **Massage Establishment.** A place of business wherein private massage is practiced, used or made available as a principal use of the premises.
- (hh) **Massage Room.** The area where private massage is performed.
- (ii) **Massage Technician.** A person who practices, administers or uses massage for a consideration, and who holds a valid license under this Chapter.
- (jj) **Minor.** Any person under the age of eighteen (18) years.
- (kk) **Nudity.** 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 part of the nipple, or the showing of covered male genitals in a discernible turgid state.
- (ll) **Operator.** Any person operating, conducting, maintaining or owning any sexually-oriented establishment, adult-oriented establishment or massage establishment.
- (mm) **Patron.** Any person who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give any consideration therefor.
- (nn) **Premises.** The real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the owner or operator of the business.
- (oo) **Residential.** Pertaining to the use of land, whether situated within the City or not, for premises such as homes, townhouses, duplexes, condominiums, apartments and mobile

homes, which contain habitable rooms for non-transient occupancy and which are designed primarily for living, sleeping, cooking and eating therein. A premises which is designed primarily for living, sleeping, working and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes. Hotels, motels, boarding houses, nursing homes and hospitals shall not be considered to be residential.

- (pp) **Sadomasochistic Abuse.** Flagellation or torture by a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
- (qq) **School.** A building, whether situated within the City or not, where persons regularly assemble for the purpose of instruction or education, together with playgrounds, stadia and other structures or grounds used in conjunction therewith. The term is limited to:
- (1) Public and private schools used for primary or secondary education in which any regular kindergarten or grades one (1) through twelve (12) classes are taught; and
  - (2) Special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in kindergarten or any of grades one (1) through twelve (12).
- (rr) **Semi-Nude or Semi-Nudity.** The exposure of a bare female breast with less than one-fourth (1/4) of the breast surface area, contiguous to and containing the areola, completely and opaquely covered (see definition of breast in this Section). Each female person may determine which one-fourth (1/4) of her breast surface area contiguous to and containing the areola is to be covered.
- (ss) **Sexual Conduct.** The commission of any of the following: sexual intercourse, sodomy, bestiality, necrophilia, human excretion, masturbation, sadism, masochism, fellatio, cunnilingus, lewd exhibition of human genitals, or passionate kissing and petting of a sexual nature.
- (tt) **Sexual Encounter Center.** A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
  - (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.
- (uu) **Sexual Intercourse.** Physical sexual contact between individuals that involves the genitalia of at least one (1) person including, but not limited to, heterosexual intercourse, sodomy, fellatio, or cunnilingus.
- (vv) **Specified Anatomical Areas.** Less than completely and opaquely covered:
- (1) Human genitals, pubic region;
  - (2) Buttock; or
  - (3) Female breast below a point immediately above the top of the areola.
  - (4) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

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- (ww) **Specified Sexual Activities.** 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, cunnilingus;
  - (3) Fondling or other erotic touching of human genitals, pubic region, buttock, or female breasts, whether covered or uncovered.
  - (4) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.
- (xx) **Substantial.** As used in various definitions, shall mean fifty percent (50%) or more of a business' stock in trade, display space, floor space or retail sales in any one (1) month during the license year.
- (yy) **Waiting Area.** An area adjacent to the main entrance that is separate from any area where massages are given.

**Sec. 11-7-3 Public Indecency Prohibited.**

- (a) Any person who, within the City of Amery municipal limits, knowingly or intentionally, in a public place, commits public indecency by doing one of the following:
- (1) Engaging in specified sexual activities, including, but not limited to, public passionate kissing or petting of a sexual nature;
  - (2) Displaying specified anatomical areas; or
  - (3) Appearing in a state of nudity.
- (b) In addition to any other actions allowed by law or taken by the Common Council and/or Committee thereof, including the action of applicable license revocation or non-renewal, anyone who violates any of the provisions of this Section shall forfeit not less than Two Hundred Fifty Dollars (\$250.00), and not more than Two Thousand Dollars (\$2,000.00), for each offense, together with costs, and if such forfeiture and costs are not paid, such person so convicted shall be subject to such other penalties available by law.

**Sec. 11-7-4 Exposing Minors to Harmful Materials.**

- (a) It shall be unlawful for any person knowingly to exhibit for a monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, show or other presentation which in whole or in part depicts nudity, or specified sexual activities and which is harmful to minors.
- (b) It shall be unlawful for any person knowingly to sell or loan for monetary consideration to a minor:

- (1) Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts specified anatomical areas or shows specified sexual activities and which is harmful to others.
- (2) Any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any material enumerated in Subsection (b)(1) hereof, or explicit and detailed verbal descriptions or narrative accounts of specified sexual activities and which, taken as a whole is harmful to minors.
- (c) It shall be unlawful for any person knowingly to admit a minor to any premises whereon there is exhibited nudity or specified sexual activities which is harmful to minors unless such minor is accompanied by his/her parent or legal guardian.
- (d) Any person violating this Section shall be subject to the penalty provisions of Section 1-1-7.

**Sec. 11-7-5 through Sec. 11-7-19      Reserved for Future Use.**



Article B: Entertainment Featuring Live Sexually  
Explicit Performances

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**Sec. 11-7-20 Prohibitions Applicable to Premises Holding  
Alcohol Beverage Licenses.**

- (a) It shall be unlawful for any owner or operator of premises holding a 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 area as defined in this Chapter, or to employ any device which is intended to give the appearance of or simulate such specified anatomical areas or publicly display or perform any specified sexual activities on the licensed premises.
- (b) Any licensee who permits a violation of Subsection (a) above shall be subject to revocation of all alcohol beverage licenses issued by the City to the licensee.

**Sec. 11-7-21 Sexually Explicit Live Adult Entertainment.**

- (a) This Section applies only to premises offering live performances by persons appearing in a state displaying some portions of specified anatomical areas not covered by fully opaque coverings. Appearance in public in a state of nudity is prohibited by Section 11-7-3.
- (b) No person shall open premises to the public offering live performances by persons appearing in a state of partial nudity displaying some portions of specified anatomical areas not covered by fully opaque coverings, whether such persons are paid for such performance or not, unless the person opening the premises has obtained a license from the Common Council pursuant to Section 11-7-22 and is in full compliance with other City regulations, including zoning regulations.
- (c) No person, employee, entertainer or patron shall be permitted to have any physical contact with any entertainer on the premises during any performance. All performance shall only occur on a stage, or on a table that is elevated at least eighteen (18) inches above the immediate floor level and, to prevent actual physical contact between the entertainer and any other person, employee or patron, shall not be less than five (5) feet from any area occupied by any patron. Patrons shall not have any physical contact with, and shall not be less than five (5) feet from, any entertainer during the payment of a tip or gratuity.

**Sec. 11-7-22 Annual Adult Entertainment License.**

- (a) **Application.** Applications for an annual adult entertainment license shall be made to the City Administrator. The City Administrator shall notify the Police Department and Fire Inspector of the license application, publish a Class I notice of such application and have

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the license application submitted to the Common Council within thirty (30) days of application. Investigating officials shall submit written reports and recommendations to the Common Council. A public hearing shall be held on the application, preceded by a Class II notice. The Common Council may take any testimony regarding the granting or denial of such license.

- (b) **Action.** The Common Council shall either approve, modify or reject the application; the reasons for the action taken shall be specified in the written record of the Common Council.
- (c) **Probationary Period.** If license issuance is approved by a majority of the Common Council, an initial applicant shall be granted a probationary license by the City Administrator. An annual license shall be granted if, upon the expiration of the six (6) month probationary period, no violations under this Article occur and the applicant corrects any deficiencies or problems that the applicant is directed to correct. If, however, for any reason, the application is denied by the Common Council, the Common Council shall specify the findings made that support that denial.
- (d) **License Term.** The license granted under this Article shall expire on June 30th of each year and each license shall be subject to revocation as hereinafter provided.
- (e) **Form of License.** The City Administrator shall be responsible for, following Common Council action, issuing all licenses under this Section. All such licenses shall specify the nature of the holder and the license and the date for which it is applicable, as well as any conditions that may be imposed by the City. All such licenses shall be open to public inspection and posted in public view on the premises for which issued.
- (f) **Fee.** All such license applications shall be accompanied by a fee as prescribed in Section 1-3-1. If for any reason the license is denied, one-half (1/2) of the license fee shall be returned to the applicant. If the license is granted, the entire fee will be kept by the City.
- (g) **Number of Licenses Limited.** No more than three (3) annual adult entertainment licenses, issued under this Article, shall be issued within the City of Amery at one (1) time, and no more than one (1) license shall be issued to any one (1) individual, partnership or corporation.

**Sec. 11-7-23 Renewals.**

The holder of an annual license granted under this Article shall submit an application for renewal at least sixty (60) days before the expiration of the license; failure to comply with this application schedule shall mean that the license shall lapse and any new application shall be reviewed as a new application. Such license may be renewed pursuant to the provisions of Section 11-7-22 as that Section applies to notice being given by the City Administrator and provisions for publication and action by the Common Council.

## **Sec. 11-7-24 Regulations.**

Any license holder governed by this Article shall comply with the following regulations:

- (a) No dancing shall be permitted by any performers under the auspices of the management, whether paid or not, within six (6) feet from any location from which patrons are directly served, while so entertaining the patrons.
- (b) No dancer, performer, or any individual, who is performing, singing, or dancing, shall have either direct or indirect (i.e., lap dancing) physical contact with any patron, in violation of Sec. 944.36, Wis. Stats.
- (c) While dancing is in progress, the establishment shall be adequately illuminated so as to permit safe ingress and egress from the premises.
- (d) Good order shall be maintained at all times. Without limitation due to enumeration, a lack of "good order" for purposes of this Article shall be deemed to include persistent loud noises to the annoyance or detriment of surrounding property owners, patrons urinating in public, profane language and/or fighting.
- (e) The premises shall close and all patrons shall vacate the premises between midnight and 10:00 a.m. Sunday through Friday, and midnight to noon on Saturday.
- (f) The license holder shall insure that building capacity limits as set by the Fire Department and/or Building Code are complied with at all times.
- (g) The license holder shall comply with all applicable State Statutes and regulations and all county and City ordinances.
- (h) The management, license holder and employees shall obey all reasonable orders or directions of any law enforcement officer.
- (i) The performance of any dance by performers under the auspices of the management shall be given only on a raised portion of the floor separated by a railing or other device from the patrons so as to deter patrons from participating in the dance.
- (j) No license holder, personally or through an agent or employee, shall advertise, allow or produce nude entertainment or performances in violation of this Section or in violation of any City Ordinance or State Statute.
- (k) The license holder shall not permit any person to publicly perform specified sexual activities on the licensed premises.
- (l) The licensee shall not permit any person to touch any performer's specified anatomical areas during a public performance.
- (m) The use of simulated sexual organs during dances or performances is prohibited.
- (n) No license holder shall permit any amateur dancing, entertainment, or performances on the license holder's premises in violation of this Section or any applicable State or Federal laws.

## **Sec. 11-7-25 Location.**

- (a) No establishment licensed under this Article shall permit any performance or entertainment governed by this Article to occur within five hundred (500) feet of any area zoned for

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residential, church, school, nursing home, public park, or day care center uses, or other establishment licensed under this Article. No establishment licensed under this Article shall be located within five hundred (500) feet of any other establishment licensed under this Article, within five hundred (500) feet of any business holding an alcohol beverage license, or as otherwise limited by the City's Zoning Code.

- (b) For purposes of this Section, distances are to be measured in a straight line, without regard to intervening structures or objects, from the property line of the adult-oriented establishment to the nearest property line of another adult-oriented establishment, school, place of worship, residential district or business holding an alcohol beverage license.

**Sec. 11-7-26 Penalty.**

In addition to any other actions allowed by law or taken by the Common Council, including the action of license revocation or non-renewal, anyone who violates any of the provisions of this Article shall be subject to a forfeiture as prescribed by Section 1-1-7, for each and every offense, together with the costs of prosecution. 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. Citations may be issued to the license holder or to his/her employees, operators or agents.

**Sec. 11-7-27 License Suspension, Revocation or Non-Renewal.**

- (a) **In General.** Any adult entertainment license granted herein may be revoked, suspended, or not be renewed by the Common Council as follows:
  - (1) If the applicant has made or recorded any statement required by this Article knowing it to be false or fraudulent or intentionally deceptive.
  - (2) For the violation of any provision of this Article, except for establishment license matters involving a violation of Zoning, Property Maintenance or Building Codes, in such case the license shall be revoked after the second (2nd) conviction thereof in any license year.
  - (3) After one (1) conviction of any establishment personnel of an offense under Ch. 944, Wis. Stats., or of an offense against the person or property of a patron of the property or of an offense involving substance scheduled in Subchapter II of Ch. 961, Wis. Stats., where there is shown the participation or knowledge of any other establishment personnel or of any individual within the business structure of the applicant.
- (b) **Notice of Hearing.** No license shall be revoked, suspended, or not renewed by the Common Council except upon due notice and hearing to determine whether grounds for such action exist. Such hearing shall be held before the Common Council. Notice of such hearing shall be in writing and shall state the grounds of the complaint against the licensee. The notice shall be served upon the licensee at least fifteen (15) days prior to the date of the hearing and shall state the time and place thereof.

- (c) **Hearing.** The licensee shall be entitled to be heard, to be represented by counsel, to cross-examine opposing witnesses, to present witnesses on his or her own behalf under subpoena by the Common Council if such is required, and the hearing may be stenographically recorded at the licensee's option and expense. At the conclusion of such hearing, the Common Council shall prepare findings of fact and conclusions of law as to what, if any, action the Common Council will take with respect to the license. The Common Council shall provide the complainant and licensee with a copy of the report.

**Sec. 11-7-28 License Transfer.**

Any license granted under the provisions of this Article shall not be transferable. All license applications shall be original or for a renewal.

**Sec. 11-7-29 through Sec. 11-7-39 Reserved for Future Use.**



## Article C: Adult Oriented Establishments

### **Sec. 11-7-40 Intent of Article.**

It is the purpose of this Article to regulate adult oriented establishment businesses (hereinafter referred to as adult oriented establishments) to promote the health, safety, morals, and the general welfare of the citizens of the City of Amery, to aid in the alleviation and prevention of the adverse and deleterious effects of criminal activity and disruption of the public peace associated with such establishments, and to establish reasonable and uniform regulations to prevent the serious health hazards associated with unsafe and unsanitary conditions known to exist in those establishments and to alleviate the spread of sexually transmitted diseases and other contagious diseases in those establishments.

### **Sec. 11-7-41 Adult Oriented Establishment License Required.**

- (a) Except as provided in Subsection (d) below, no adult oriented establishment shall be operated or maintained within the corporate limits of the City of Amery without first obtaining a license to operate issued by the City of Amery.
- (b) A license may be issued only for one (1) adult oriented establishment located at a fixed and certain place per filed application. Each oriented establishment must have a license.
- (c) No license or interest in a license may be transferred to any person, partnership, or corporation except as set forth in Section 11-7-49. No more than one (1) license shall be issued to any one (1) individual, partnership or corporation.
- (d) All adult oriented establishments existing at the time of the original passage of this Chapter must submit an application for a license within ninety (90) days of the passage of this Chapter. If an application is not received within said ninety (90) day period, then such existing adult oriented establishment shall cease operations.

### **Sec. 11-7-42 Application for License.**

- (a) **License Procedure.** Any person, partnership, or corporation desiring to secure an adult oriented establishment license shall make application to the City Administrator. The application shall be filed in triplicate with and dated by the City Administrator. A copy of the application shall be distributed within ten (10) days of receipt thereof to the Police Department, Fire Inspector, Building Inspector, and to the applicant. The procedures prescribed in Section 11-7-22(a) through (c) shall be applicable to adult entertainment licenses under this Article.
- (b) **Required Information.** The application for a license shall be upon a form provided by the City Administrator. An applicant for a license, which shall include all partners or limited

partners of a partnership applicant, all officers or directors of a corporate applicant, all members of any limited liability company applicant, and any other person who is interested directly in the ownership or operation of the business, shall furnish the following information under oath:

- (1) Name, including all aliases, address and date of birth of applicant;
- (2) Written proof that the individual is at least eighteen (18) years of age;
- (3) All residential addresses of the applicant for the past ten (10) years;
- (4) The business, occupation, or employment of the applicant for ten (10) years immediately preceding the date of application;
- (5) The exact nature of the adult entertainment to be conducted;
- (6) Whether the applicant previously operated in this or any other state, county or municipality under an adult oriented establishment license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation (the applicant shall provide the name of the municipality/state where such license was suspended or revoked);
- (7) All criminal and traffic convictions, whether federal or State, or municipal Ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except traffic offenses;
- (8) Fingerprints made by a law enforcement agency and two (2) portrait photographs of at least two (2) inches by two (2) inches of the applicant;
- (9) The address of the adult oriented establishment to be operated by the applicant;
- (10) Proof of right to occupy under Section 11-7-43(d); and
- (11) If the applicant is a corporation, the application shall specify the name of the corporation, the date and State of incorporation, and the name and address of the registered agent of the corporation.

- (c) **Failure to Provide Information.** Failure or refusal of the applicant to provide any information for the investigation of the application, or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding said application, or refusal to submit to or cooperate with any investigation required by this Section, shall constitute an admission by the applicant of ineligibility for such license and shall be grounds for denial thereof.

### **Sec. 11-7-43 Standards for Issuance of a License.**

- (a) **General Requirements.** To receive a license to operate an adult establishment, an applicant must meet the following standards:
- (1) If the applicant is an individual:
    - a. The applicant shall be at least eighteen (18) years of age;
    - b. Subject to Chapter 111, Wis. Stats., the applicant shall not have been convicted of or pleaded nolo contendere, or have charges pending or deferred prosecution,

- to a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and
- c. The applicant shall not have been found to have previously violated this Article within five (5) years immediately preceding the date of the application.
- (2) If the applicant is a corporation:
- a. All officers, directors, and others required to be named under Section 11-7-42(b) shall be at least eighteen (18) years of age;
  - b. Subject to Chapter 111, Wis. Stats., no officer, director, or other person required to be named under Section 11-7-42(b) shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and
  - c. No officer, director or other person required to be named under Section 11-7-42(b) shall have been found to have previously violated this Article within five (5) years immediately preceding the date of the application.
- (3) If the applicant is a partnership, joint venture, limited liability company or any other type of organization where two (2) or more persons have a financial interest:
- a. All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age;
  - b. Subject to Chapter 111, Wis. Stats., no person having a financial interest in the partnership, joint venture, or other type of organization shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and
  - c. No person having a financial interest in the partnership, joint venture or other type of organization shall have been found to have violated any provision of this Article within five (5) years immediately preceding the date of the application.
- (b) **Investigation.** No license shall be issued unless the City of Amery Police Department has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the City Administrator no later than fourteen (30) days after the application.
- (c) **Inspection.** The Fire Inspector and/or Police Department shall inspect the premises proposed to be licensed to verify compliance with their respective Codes, and shall report compliance findings to the City Administrator within thirty (30) days of the date of application.
- (d) **Proof.** No license shall be issued unless the applicant provides proof of one (1) of the following:
- (1) Ownership of a properly zoned building or parcel of real property upon which a building can be constructed. Proper zoning includes permissible non-conforming use status.

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- (2) A lease on a building which is properly zoned to house a venture. Proper zoning includes permissible non-conforming use status.
- (3) An option to purchase property which is properly zoned for the venture.
- (4) An option to lease property which is properly zoned for the venture. Proper zoning includes permissible non-conforming use status.

**Sec. 11-7-44 License Fee.**

A non-refundable adult oriented establishment license application fee as prescribed in Section 1-3-1 shall be submitted with the application for a license.

**Sec. 11-7-45 Display of License or Permit.**

The adult oriented establishment license shall be displayed in a conspicuous public place in the adult oriented establishment.

**Sec. 11-7-46 Renewal of License or Permit.**

- (a) Every license issued pursuant to this Article will terminate on June 30 of the period for which the license is issued, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the City Administrator. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the City Administrator. A copy of the application for renewal shall be distributed by the City Administrator to the Police Department, Fire Inspector and the applicant. The application for renewal shall be upon a form provided by the City Administrator and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.
- (b) A license renewal fee as prescribed in Section 1-3-1 shall be submitted with the application for renewal.
- (c) If the Police Department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the City Administrator.

**Sec. 11-7-47 Denial of Application.**

- (a) Whenever an initial application is denied, the City Administrator shall, within fourteen (14) days of the denial, advise the applicant in writing of the reasons for such action. If the

applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held at the next regularly scheduled meeting of the Common Council.

- (b) Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this Article shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the City Administrator.

### **Sec. 11-7-48 Transfer of License.**

Licenses may not be transferred. All license applications shall be original or for a renewal.

### **Sec. 11-7-49 Physical Layouts of Adult Oriented Establishments.**

Any adult oriented establishment having available for customers, patrons or members any booth, room, or cubicle for the private viewing of any motion picture, videotape or compact disc in which a significant or substantial portion of the material presented is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas must comply with the following requirements:

- (a) **Access.** Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the adult oriented establishment and shall be unobstructed by any door, lock or other control-type devices.
- (b) **Construction.** Every booth, room or cubicle shall meet the following construction requirements:
  - (1) Each booth, room or cubicle shall be separated from adjacent booths, rooms, cubicles and any non-public areas by a wall.
  - (2) Have at least one (1) side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same.
  - (3) All walls shall be solid and without any openings, extended from the floor to a height of not less than six (6) feet, and be light colored, non-absorbent, smooth textured and easily cleanable.
  - (4) The floor must be light colored, non-absorbent, smooth textured and easily cleanable.
  - (5) The lighting level of each booth, room or cubicle, when not in use, shall be a minimum of ten (10) foot candles at all times, as measured from the floor.
- (c) **Occupants.** Only one (1) individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type of specified sexual activity, cause any bodily discharge or litter while in the booth. No person shall alter, damage or deface any portion of any such booth, room or cubicle in such a manner that it no longer complies with the provisions of this Section.

## **Sec. 11-7-50 Responsibilities of Operators.**

- (a) An operator, licensed under this Article, shall maintain a register of all employees, showing the name and aliases used by the employee, home address, birth date, sex, telephone numbers, Social Security Number, and date of employment and termination. The above information on each employee shall be maintained in the register on the premises of a period of three (3) years following termination.
- (b) The operator shall make the register of employees available immediately for inspection by law enforcement officers upon demand of a member of a law enforcement agency at all times.
- (c) Every act or omission by an employee constituting a violation of the provisions of this Article shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.
- (d) Any act or omission of any employee constituting a violation of the provisions of this Article shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, or renewed.
- (e) No employee of an adult oriented establishment shall allow any minor to loiter around or to frequent an adult oriented establishment or to allow any minor to view sexually-explicit live adult entertainment or materials containing depictions of specified sexual activities or specified anatomical areas as defined herein.
- (f) The operator shall maintain the premises in a clean and sanitary manner at all times.
- (g) The operator shall ensure compliance of the establishment and its patrons with the provisions of this Article.
- (h) The operator shall ensure there is conspicuously posted inside each booth, room or cubicle an un-mutilated and undefaced sign or poster supplied by the licensee and approved by the Common Council which contains information regarding sexually transmitted diseases and the telephone numbers from which additional information can be sought.
- (i) The operator shall ensure there is conspicuously displayed at a place near the main entrance of the establishment, or portion thereof, any information, brochures, or pamphlets supplied by the City pertaining to sexually transmitted diseases.
- (j) The operator shall ensure there are posted regulations concerning booth occupancy on signs, with lettering at least one (1) inch high, that are placed in conspicuous areas of the establishment and in each of the booths, rooms or cubicles.
- (k) It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of an adult oriented establishment at any time the adult oriented establishment is open for business.
- (l) It shall be the duty of the operator of each adult oriented establishment to ensure that an attendant is stationed at each public entrance to the adult oriented establishment at all times

during regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the adult oriented establishment. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:

- (1) A valid operator's, commercial operator's, or chauffeur's driver's license; or
  - (2) Personal identification card issued by the State of Wisconsin reflecting that such person is eighteen (18) years of age or older.
- (m) No adult oriented establishment regulated by this Chapter may remain open between the hours of 2:00 a.m. and 8:00 a.m., except on Saturday and Sunday, when the closing hours shall be between 2:30 a.m. and 8:00 a.m.

### **Sec. 11-7-51 Registration of Employees.**

- (a) All operators, employees, and independent contractors working in any adult oriented establishment hereunder shall, prior to beginning employment or contracted duties, register with the City Administrator. Such registration shall include the following:
  - (1) Name, address, birth date, any aliases used, telephone numbers, date of employment and name of employer; and
  - (2) Photographs and fingerprinting.
- (b) Upon registration, the licensee, subject to design approval by the City Administrator, will provide to each registered employee an identification card containing the employee's photograph identifying the employee as such, which shall be kept available for production upon request of all inspecting officers while on duty at such adult oriented establishment.
- (c) All registrations hereunder are valid for a period of one (1) year.
- (d) The registration fee of Fifty Dollars (\$50.00) shall be paid per registration, which shall be paid to the City to cover costs of investigation and administration.

### **Sec. 11-7-52 Exclusions.**

All private schools and public schools, as defined in Chapter 115, Wis. Stats., located within the City of Amery are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum.

### **Sec. 11-7-53 Penalty.**

In addition to any other actions allowed by law or taken by the Common Council, including the action of a license revocation, suspension or non-renewal, anyone who violates any of the provisions of this Chapter shall be subject to a forfeiture as prescribed by Section 1-1-7, for each

and every offense, together with the costs of prosecution. 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.

### **Sec. 11-7-54 License Suspension, Revocation or Non-Renewal of Licenses.**

- (a) **In General.** Any license granted herein may be revoked, suspended, or not renewed by the Common Council as follows:
- (1) If the applicant has made or recorded any statement required by this Section knowing it to be false or fraudulent or intentionally deceptive;
  - (2) For the violation of any provision of this Article, except for establishment license matters involving a violation of Building, Property Maintenance or Zoning Codes, in such case the license shall be revoked after the second (2nd) conviction thereof in any license year;
  - (3) After one (1) conviction by any establishment personnel of an offense under Ch. 944, Wis. Stats., or of an offense against the person or property of a patron of the property or of an offense involving substance in Subsection II of Ch. 961, Wis. Stats., where there is shown the participation or knowledge of any other establishment personnel or of any individual within the business structure of the applicant.
  - (4) If the licensee, operator or employer becomes ineligible to obtain a license.
  - (5) If an operator employs an employee who does not have a permit or provides space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without being registered with the City Administrator.
  - (6) If any cost or fee required to be paid by this Section is not paid.
  - (7) If any intoxicating liquor or fermented malt beverage, narcotic or controlled substance is served or consumed on the premises of the adult oriented establishment.
  - (8) If any operator, employee or entertainer sells, furnishes, gives or displays, or causes to be sold, furnished, given or displayed to any minor any material depicting specified sexual activities or specified anatomical areas.
- (b) **Notice of Hearing.** No license shall be revoked, suspended, or not renewed by the Common Council except upon due notice and hearing to determine whether grounds for such action exist. Such hearing shall be held before the Common Council. Notice of such hearing shall be in writing and shall state the grounds of the complaint against the licensee. The notice shall be served upon the licensee at least fifteen (15) days prior to the date of the hearing and shall state the time and place thereof.
- (c) **Hearing.** The licensee shall be entitled to be heard, to be represented by counsel, to cross-examine opposing witnesses, to present witnesses on his or her own behalf if such is required, and the hearing shall be stenographically recorded at the licensee's option and expense. At the conclusion of such hearing, the Common Council shall prepare findings of fact and conclusions as to what, if any, action the Common Council will take with

respect to the license. The Common Council shall provide the complainant and licensee with a copy of the report.

**Sec. 11-7-55 through Sec. 11-7-59      Reserved for Future Use.**



## Article D: Houses of Prostitution

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### **Sec. 11-7-60 Owners and Keepers.**

No person shall keep or maintain or in any way be connected with, or contribute to the support of any prostitution house or house of ill fame or shall knowingly own, or be interested therein as proprietor or landlord thereof.

### **Sec. 11-7-61 Inmate or Frequenter.**

Any person engaging in prostitution of or found at or frequenting either of the places described in this Article shall be deemed a disorderly person and shall be subject to the penalty hereinafter provided.

### **Sec. 11-7-62 Prostitution.**

It shall be unlawful for any person to commit or offer or agree to commit a lewd act or an act of prostitution.



# Title 11 ► Chapter 8

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## Noise Control

<b>11-8-1</b>	Loud and Unnecessary Noise; General Policy
<b>11-8-2</b>	Excessive Noise Declared a Nuisance
<b>11-8-3</b>	Exemptions
<b>11-8-4</b>	Variances
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### Sec. 11-8-1 Loud and Unnecessary Noise; General Policy.

- (a) **Short Title.** This Chapter may be cited as the "Noise Control Ordinance."
- (b) **Findings, Policy and Scope.** Excessive sound is a serious hazard to the public health and welfare, safety, and the quality of life. A substantial body of science and technology exists by which excessive sound may be substantially abated. The people have a right to an environment free from excessive sound that may jeopardize their health, welfare, or safety, or degrade the quality of life. It is the policy of the City of Amery to prevent excessive sound which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life. This Chapter shall apply to the control of all sound originating within the limits of the City of Amery.
- (c) **Definitions.** All acoustical terminology shall be that contained in ANSI S1.1, "Acoustical Terminology.", and as follows:
- (1) **ANSI.** American National Standards Institute or its successor bodies.
  - (2) **A-Weighted Sound Level.** The sound pressure level in decibels, as measured with a sound level meter, using the A-weighted network. A level so read is designated db(A) or dBA.
  - (3) **Ambient Noise.** The all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources, near and far.
  - (4) **Amplitude.** The absolute value of the maximum displacement from zero (0) value during one (1) period of oscillation.
  - (5) **Construction.** Any safe preparation, assembly, erection, substantial repair, alteration, or similar action, but excluding demolition, for or of public or private rights-of-way, structures, utilities or similar property.

- (6) **Cycle.** A complete sequence of values of a periodic quantity that occur during a period.
- (7) **Day.** Shall mean the hours between 7:00 a.m. and 10:00 p.m.
- (8) **Decibel.** A standard unit of measuring sound pressure levels that is equal to 1/10 of a bel and is a unit of level when the base of the logarithm is the tenth root of ten (10), and the quantities concerned are proportional to power; abbreviated "dB."
- (9) **Demolition.** Any dismantling, intentional destruction, or removal of structures, utilities, public or private right-of-way surfaces, or similar property.
- (10) **Emergency.** Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.
- (11) **Emergency Work.** Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.
- (12) **Fluctuating Sound.** A fluctuating sound is a sound whose sound pressure level varies significantly but does not equal the ambient environmental level more than once during the period of observation.
- (13) **Frequency.** The reciprocal of the primitive period of a function periodic in time. The unit is the cycle per unit time and must be specified; typically this unit will be Hertz (Hz), i.e. cycles per second.
- (14) **Impulsive Sound.** An impulsive sound is characterized by brief excursions of sound pressure (acoustic impulses) which significantly exceed the ambient environmental sound pressure. The duration of a single impulse is usually less than one (1) second.
- (15) **Intermittent Sound.** An intermittent sound is a sound whose sound pressure level equals the ambient environmental level two (2) or more times during the period of observations. The period of time during which the level of the sound remains at an essentially constant value different from that of the ambient is on the order of one (1) second or more.
- (16) **Microbar.** A unit of pressure commonly used in acoustics that is equal to one (1) dyne per square centimeter.
- (17) **Muffler or Sound Dissipative Device.** A device for abating the sound of escaping gases of an internal combustion engine.
- (18) **Night.** Shall mean the hours between 10:00 p.m. and 7:00 a.m.
- (19) **Non-Steady Sound.** A non-steady sound is a sound whose level shifts significantly during the period of observation.
- (20) **Period of Observation.** The period of observation is the time interval during which acoustical data are obtained. The period of observation is determined by the characteristics of the sound being measured and should also be at least ten (10) times as long as the response time of the instrumentation. The greater the variance in indicated sound level, the longer must be the observation time for a given expected accuracy of the measurement.
- (21) **Person.** Any person, person's firm, association, co-partnership, joint venture, corporation, or any entity public or private in nature.

- (22) **Public Right-of-Way.** Any street, avenue, boulevard, highway, sidewalk, or alley or similar place which is owned or controlled by a governmental entity.
- (23) **Pure Tone.** A sound having a single frequency.
- (24) **Real Property Boundary.** An imaginary line along the ground surface and its vertical extension which separates the real property owned by one (1) person from that owned by another person, but not including intra-building real property divisions.
- (25) **Sound.** An oscillation in pressure, particle displacement, particle velocity, or other physical parameter in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.
- (26) **Sound Analyzer.** A device for measuring the band pressure level or pressure spectrum level of a sound as a function of frequency.
- (27) **Sound Level Meter.** An instrument including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of noise and sound levels in a specified manner.
- (28) **Sound Pressure Level.** The sound pressure level, in decibels of sound, is twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of this sound to the reference pressure, which reference pressure must be explicitly stated.
- (29) **Spectrum.** A spectrum is a function of time and is a description of its resolution into components, each of different frequency and usually of different amplitude and phase and is also used to signify a continuous range of components each of different amplitude and phase. A spectrum is used to signify a continuous range of components usually wide in extent within which waves have some specified characteristics such as "audio-frequency spectrum" and is also applied to functions of variables other than time.
- (30) **Steady Sound.** A sound whose level remains essentially constant (i.e., fluctuations are negligibly small) during the period of observation.

## **Sec. 11-8-2 Excessive Noise Declared a Nuisance.**

Excessive noise, as defined in this Chapter, is hereby declared to be a public nuisance and may be subject to summary abatement procedures as described herein. Such abatement may be in addition to administrative proceedings, forfeitures, and penalties as provided in this Chapter. It shall be the duty of the Police Department, upon complaint of a nuisance, to determine if excessive noise exists as defined in this Chapter and to take the appropriate action as specified herein. Conditions of excessive noise which are specifically exempted or for which a variance permit has been issued in conformity with provisions of this Chapter shall be exempt from the above provisions.

### **Sec. 11-8-3 Exemptions.**

The following activities shall be exempt from the regulations of this Chapter:

- (a) **Construction Sites, Public Utility Projects, Public Works.** The daytime criteria, as set forth in Tables I and II, shall not apply to construction sites, public utilities, and public works projects and operations during daytime hours Monday through Saturday, inclusive; provided, however, that noise production shall be minimized through proper equipment operations and maintenance. Stationary equipment on construction projects lasting more than ten (10) days within residential districts shall be shielded or located to prevent unnecessary noise.
- (b) **Emergency Operations.** Emergency short-term operations which are necessary to protect the health and welfare of the citizens (such as emergency utility and street repair, fallen tree removal, snow removal, or emergency fuel oil delivery) shall be exempt from the criteria as set forth in Tables I and II, provided that reasonable steps shall be taken by those in charge of such operations to minimize noise emanating from the same.
- (c) **Noises Required by Law.** The provisions of Tables I and II shall not apply to any noise required specifically by law for the protection, health, welfare, or safety of people or property.
- (d) **Lawn Mowers, Garden Tools, Etc.** Power equipment such as lawn mowers, hand tools, small lawn and garden tools, riding tractors, and snow removal equipment which is necessary for the maintenance of property, is kept in good repair and maintenance, and which equipment, when new, would not comply with the standards set forth in this Chapter shall be exempt. No person shall operate such equipment, with the exception of snow removal equipment, between 10:00 p.m. and 7:00 a.m.
- (e) **Residential Air Conditioners.** Noise emitted by residential air conditioners shall be judged by the criteria set forth in Section 11-8-6.
- (f) **Airplanes and Railroad Operations.** Aircraft and railroad operations which are controlled specifically by federal law and enforcement shall be exempt.
- (g) **Bells, Chimes.** Bells, chimes, church bells, and similar devices which signal the time of day and operate during the daytime hours for a duration of no longer than fifteen (15) minutes in any given hour shall be exempt from the daytime noise limitations of Section 11-8-6.
- (h) **Exemptions.** These provisions shall not apply to:
  - (1) Activities covered by the variance and exemption provisions of this Chapter.
  - (2) Non-stationary farming equipment.

### **Sec. 11-8-4 Variances.**

The Common Council shall have the authority, consistent with this Chapter, to grant special variances in accordance with the following provisions.

(a) **Special Variance Permits.**

- (1) **General.** A special variance permit may be issued upon request provided that the work producing such noise is necessary to promote the public health or welfare and reasonable steps are taken to keep such noise at the lowest practical level.
- (2) **Special Community Events.** A special variance permit may be issued for special events, such as circuses, 4th of July celebrations, and similar community events, which are limited in duration and are generally acceptable to the people of the community provided that precautions are taken to maintain the noises produced at the lowest practical level.
- (3) **Procedure.** Any person seeking a special variance permit pursuant to this Chapter shall file an application with the Police Department thirty (30) days prior to the commencement of the event or activity for which the variance permit is requested. The Police Department, however, may waive the time limit when compliance therewith is impractical. The application for a special variance permit must be made in writing to the Police Department and shall contain all the following pertinent information:
  - a. Dates required.
  - b. Time and place of operation.
  - c. Equipment operation involved.
  - d. Necessity for such permit.
  - e. Steps to be taken to minimize noise.
  - f. Name of responsible person who will be present at the operation site while the noise is produced.
- (4) **Issuance.** Special variance permits shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The special variance permit shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of these special variance permits shall terminate it and subject the person holding it to those provisions of this Chapter regulating the source of sound or activity for which the special variance is granted.
- (5) **Extension or Modification.** Application for extension of time limits specified in special variance permits or for modification of other substantial conditions shall be treated like applications for initial special variances.

(b) **Conditional Variances.**

- (1) **Grounds.** It may not be technically or economically feasible for certain commercial or industrial sources of sound to comply with the standards set forth herein. Therefore, the Common Council may grant variances from this Section if it finds that strict compliance is unreasonable because:
  - a. Conditions are beyond the control of the person granted such variance.
  - b. Special circumstances exist which would render strict compliance impractical due to special physical conditions or cause.

- c. Strict compliance would result in substantial curtailment or closing down of a business, plant, or operation.
- d. Control technology is unavailable or available only at prohibitive cost.
- e. No other alternative facility or method is available.
- (2) **Limitations; Modifications.** Variances granted pursuant to Subsection (b)(1)d or e may be limited in time and may be modified or revoked in the event the impediments in Subsection (b)(1)d or e are removed at some future time.
- (3) **Application for New Sources.** The owner, or an authorized agent, of any source of sound may apply to the Common Council for a conditional variance. For a new source, the application shall be made not less than one hundred twenty (120) days prior to commencement of sound producing operations.
- (4) **Hearing.** The application shall state upon which of the permitted exceptions it is grounded and inform the Common Council as to why the source of sound or activity for which the variance is sought should be allowed. The Common Council may find a controversy exists regarding the object of the application and hold a public hearing after notice thereof. Any person who may be affected by the variance may testify orally or may file a written statement setting forth information for the Council's consideration. Those who appear may be required to submit such additional information as the Common Council may reasonably require.
- (5) **Findings.** The Common Council shall file findings of facts, conclusions of law, and a decision with the Administrator within thirty (30) days after the hearing, or receipt of application if no hearing is held.
- (6) **Compliance With Conditions.** Conditional variances shall not be issued until the applicant has agreed to the conditions therein. The Common Council may require the applicant to post a performance bond prior to issuing the variance. The variance shall be voidable upon written notice and hearing at the option of the Common Council in the event any of the stated conditions are violated.

### **Sec. 11-8-5 Appeals.**

Appeals of an adverse decision of the Common Council shall be made to the Zoning Board of Appeals.

### **Sec. 11-8-6 Lot Line Noise.**

- (a) **Regulated.** No person shall operate or cause to be operated on private or public property any source of sound in such a manner as to create a sound level which exceeds the limits set for the zone categories in Table I, provided, however, that when sound is emitted from an industrial zone into a residential zone or commercial zone, or from a commercial zone into a residential zone, the limits set forth in Table II shall apply.

- (b) **Zones.** The following general zones as defined in the City's Zoning Code:
- (1) Residential, Agricultural and Other.
  - (2) Commercial.
  - (3) Industrial.
- (c) **Measurement.**
- (1) Measurement shall be made at or beyond the property line of the property on which such noise is generated or at or within the property line of the property on which such noise is perceived, as appropriate. Measurement shall be done four (4) feet above the ground and at least three (3) feet from large reflecting surfaces such as building walls.
  - (2) Measurement of sound shall be made either with a sound level meter that meets or exceeds the ANSI requirements of the American Standard Specification for Sound Level Meters, Type I or Type II (ANSI S1.4 - 1971) or with an Octave Band Analyzer that meets or exceeds the requirements of ANSI (S1.6 - 1960) or any subsequent nationally adopted standards superseding the above standards. In both cases, the instruments should be maintained in calibration and good working order.
  - (3) When a sound level meter is used, it shall be set to the A-weighting scale and in the FAST response mode. A windscreen shall be mounted on the microphone and the noise limitations shall be the A-scale levels set forth in Tables I and II. An octave band analyzer may be employed when there is a concentration of sound energy within a limited number of bands, but its use shall not be restricted to such situations. When an octave band analyzer is used, a standard octave band analysis shall be conducted that spans the frequency range set forth in Tables I and II.

### **Sec. 11-8-7 Immediate Threats to Health and Welfare.**

- (a) **Immediate Order.** The Chief of Police may order an immediate halt to any sound which exposes any person, except those excluded in sub. (b). to sound levels in excess of those shown in Tables III and IV. Within five (5) days following issuance of such an order, the City may apply to the appropriate court for an injunction to replace the order.
- (b) **Exemptions.** No order shall be issued if the only persons exposed to sound levels in excess of those listed in Tables III and IV are exposed as a result of:
- (1) Trespass.
  - (2) Invitation upon private property by the person causing or permitting the sound.
  - (3) Employment by the person or a contractor of the person causing or permitting the sound.
  - (4) A temporary City-authorized or recognized community or civic event.
- (c) **Compliance Requirements.** Any person subject to an order issued pursuant to sub. (a) shall comply with such order until:
- (1) The sound is brought into compliance with the order, as determined by the Chief of Police.

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- (2) A judicial order has superseded the Chief of Police order.
- (d) **Penalty.** Any person who violates an order issued pursuant to this Chapter shall, upon conviction, be subject to a penalty pursuant to Section 1-1-7. Each day of violation of said order shall constitute a separate offense.

TABLE I

**Maximum Permissible Sound Pressure  
(Levels in Decibels re .0002 Microbars)**

**7:00 a.m. to 10:00 p.m.**

<b>Octave Band Center Frequency (Hz)</b>	<b>Residential</b>	<b>Commercial</b>	<b>Industrial</b>
31.5	70	80	86
63	69	79	85
125	64	73	80
250	58	65	75
500	52	59	69
1000	47	53	63
2000	42	47	58
4000	38	42	54
8000	35	40	51
A-scale levels	57 DB (A)	63 dB (A)	72 dB (A)

**10:00 p.m. to 7:00 a.m.**

<b>Octave Band Center Frequency</b>	<b>Residential</b>	<b>Commercial</b>	<b>Industrial</b>
31.5	69	72	81
63	68	71	80
125	62	66	75
250	54	60	70
500	48	54	64
1000	42	49	58
2000	36	44	53
4000	31	40	49
8000	29	37	46
A-scale levels (for monitoring purposes)	52 dB (A)	58 dB (A)	67 dB (A)



TABLE II

**Maximum Permissible Sound Pressure  
(Levels in Decibels re .002 Microbars)**

**7:00 a.m. to 10:00 p.m.**

<b>Octave Band Center Frequency (Hz)</b>	<b>Ind. into Commercial</b>	<b>Ind. into Residential</b>	<b>Commercial into Residential</b>
31.5	80	79	75
63	79	78	74
125	74	73	69
250	69	67	64
500	63	61	58
1000	57	55	52
2000	52	50	47
4000	48	46	43
8000	45	43	40
A-scale levels (for monitoring purposes)	66 dB (A)	64 dB (A)	61 dB (A)

**10:00 p.m. to 7:00 a.m.**

<b>Octave Band Center Frequency (Hz)</b>	<b>Ind. into Commercial</b>	<b>Ind. into Residential</b>	<b>Commercial into Residential</b>
31.5	75	74	72
63	74	73	71
125	69	68	65
250	64	63	57
500	58	57	51
1000	52	51	45
2000	47	46	39
4000	43	42	34
8000	40	39	32
A-scale levels (for monitoring purposes)	61 dB (A)	60 dB (A)	55 dB (A)



**TABLE III**

**Continuous Sound Levels  
Which Pose an Immediate Threat to Health and Welfare  
(Measured at 50 Feet or 15 Meters)**

<b>Sound Level Limit (dBA)</b>	<b>Duration</b>
90	24 hours
93	12 hours
96	6 hours
99	3 hours
102	1.5 hours
105	45 minutes
108	22 minutes

**TABLE IV**

**Impulsive Sound Levels  
Which Pose an Immediate Threat to Health and Welfare  
(Measured at 50 Feet or 15 Meters)**

<b>Sound Level Limit (dBA)</b>	<b>Number of Repetitions Per 24 Hours</b>
145	1
135	10
125	100

