

## CHAPTER 9

### OFFENSES AGAINST THE PUBLIC INTEREST

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## **SUBCHAPTER I. OFFENSES AGAINST PUBLIC PEACE, ORDER AND OTHER INTERESTS.**

### **9.01 DISORDERLY CONDUCT.**

No person shall, in either a public or private place, engage in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance. Disorderly conduct includes causing, or provoking, or engaging in any fight, brawl, riot or noisy altercation.

### **9.015 PUBLIC INTOXICATION PROHIBITED.**

- (1) Definitions.
  - (a) Incapacitated person. A person that, as the result of the use of alcohol, drugs, or other controlled substances, is unconscious or whose judgment is so impaired that he or she is incapable of making rational decisions, as evidenced objectively by indicators including, but not limited, extreme physical debilitation, incoherence, or physical harm or threats of harm to himself or herself or to any other person or to property.
  - (b) Intoxicated person. A person whose mental or physical functioning is substantially impaired as a result of the use of alcohol, drugs, or other controlled substances.
  - (c) Public nuisance. Conduct by an individual that is a disturbance of the peace, including, but not limited to, endangering himself or herself or other persons or property, acting in an unruly or combative manner, creating loud noises to the disturbance of other persons, refusing to follow the instructions of a police officer, refusing to follow the instructions to leave a place of business by the owner, employee, or other person in charge thereof, or otherwise disturbing the peace in any public place.
  - (d) Public place. A place to which the public has access including, but not limited to, places owned or controlled by the city, county, or state, any public street, highway, sidewalk, parking lot, alley, park, school, place of worship, and place of business. Places of business including premises open to the public where alcohol is consumed, including a licensed alcohol establishment.
- (2) Intoxication in public places prohibited. No person in a public place shall conduct himself or herself in such a manner as to become an intoxicated or incapacitated person and to create a public nuisance.
- (3) Underage drinking prohibited. The Common Council of the City of Boscobel hereby adopts § 125.07, Wis. Stats., entitled “Underage and intoxicated persons;

presence on licensed premises; possession; penalties” as amended and all subsequent amendments thereto.

## **9.02 DISTURBING THE PEACE.**

- (1) No person shall make or cause to be made any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace, safety or welfare of any person, or that precludes the quiet enjoyment by another of his or her property or which negatively affects another’s property values. This general prohibition is not limited by the specific restrictions set forth in subsections (2) through (4) of this section.
- (2) No person shall disturb the peace by any of the following means:
  - (a) Fighting, screaming, shouting, swearing, singing or using insulting, derogatory or obscene language;
  - (b) Impeding, molesting or intimidating other persons in a public place;
  - (c) Loitering in a public place, by interfering with or obstructing persons who are in that public place; or
  - (d) Participating in a party or other gathering or being present at a party or other gathering in a public or private place that gives rise to unnecessary noise, or disturbs the peace, quiet or repose of any other person, or that interferes with another’s quiet use and enjoyment of his or her dwelling place or other property. When any police officer determines that such a party or gathering is in violation of this subsection, the officer may order the participants to disperse. If any participant refuses to disperse, the officer may arrest such person and issue a citation for violation of this section. If any participants who have once dispersed reconvene a gathering anywhere in the City within 24 hours, which gathering again violates this section, the officer may cite such participants for both violations.
- (3) No person shall use, operate, or permit the use or operation of any radio receiving set, phonograph, cassette player, compact disc player, musical instrument, microphone, audible manner, or make or cause to be made any other loud and unnecessary sounds or noises, so as to disturb the peace, quiet, comfort or repose of any other person nearby.
- (4) No person shall make any unnecessary or annoying noises with a motor vehicle or ATV/UTV by squealing tires, by using motor vehicle brakes which are in any way activated or operated by the compression of the engine (i.e., a Jacobs Engine Brake (TM) or similar hydraulically operated device that converts a power-

producing diesel engine into a power-absorbing retarding mechanism), excessively accelerating the engine, blowing the horn or emitting unnecessary and loud muffler noises.

- (5) This section shall not be construed to prohibit public celebrations or entertainments held by organizations who have the approval of the Common Council, and which are held to celebrate or observe Memorial Day, Flag Day, Labor Day, July Fourth, Veterans Day, Christmas, New Year's Day, or other events approved of by the Common Council.

### **9.03 OPEN CONTAINERS OF ALCOHOL BEVERAGES.**

- (1) **PUBLIC PROPERTY RESTRICTION.** No person shall drink any alcohol or intoxicating beverages, and no person shall possess any open container containing any such beverage on any public street, sidewalk or alley within the City or upon property belonging to the City. This restriction shall not apply to special events for which special permits are granted by the Common Council, provided that the drinking or possession occurs in areas covered by such special permits.
- (2) **REMOVAL OF OPEN CONTAINERS FROM LICENSED PREMISES.** No person holding any license for the sale of alcohol beverages shall permit any customer to leave the licensed premises while in the possession of an open container containing any alcohol or intoxicating beverage. All such licensees shall post a notice which states that no patron may leave the premises while in the possession of such an open container.

### **9.04 DISCHARGING OF FIREARMS AND FIREWORKS.**

- (1) No person except a law enforcement officer engaged in his official duty shall discharge any firearm in the City.
- (2) No person shall sell, possess or use fireworks, as that term is defined in s. 167.10, Stats., in the City.
- (3) The prohibition of sub. (2) shall not apply to the fire department during any celebration commemorating Independence Day, or when otherwise authorized by the Common Council.
- (4) The prohibition of sub. (2) shall not apply to the City, the fire department, or to any group or entity which has been issued a user's permit by the Mayor pursuant to s. 167.10(3), Stats.

**9.05 THROWING OR SHOOTING OF ARROWS, STONES AND OTHER MISSILES.**

No person shall throw or shoot any object, arrow, stone, snowball, BB, pellet, or other missile or projectile by hand or by means of an air gun, BB gun, pellet gun, sling shot or similar device which projects a missile at any person or at, in or into any building, street, sidewalk, alley, highway, park, playground or other public or private place within the City. Any air gun, BB gun or pellet gun shall be carried in a case or securely closed in a holster or wrapping and shall be unloaded.

**9.06 OBSTRUCTION OF STREETS.**

No person shall obstruct any public street, sidewalk, bridge or public ground within the City in such a manner as to prevent the free passage of pedestrian or vehicular traffic thereon or to prevent or hinder free ingress or egress to or from any place or business, church, public hall, or meeting place.

**9.07 FALSE ALARMS.**

No person shall give or send or cause to be given or sent in any manner any alarm of fire or other emergency which he or she knows to be false.

**9.08 OBSTRUCTING AN OFFICER.**

- (1) No person shall, without reasonable excuse, refuse or fail, upon command, to aid any person known by the person to be a peace officer. (Adopting s. 946.40, Stats.)
- (2) No person shall knowingly resist or obstruct an officer while such officer is doing any act in an official capacity and with lawful authority.
- (3) In this section:
  - (a) “Obstructs” includes without limitation knowingly giving false information or knowingly placing physical evidence with intent to mislead the officer in the performance of his or her duty, including the service of a summons or civil process.
  - (b) “Officer” means a peace officer or other public officer or public employee having the authority by virtue of the officer’s or employee’s office or employment to take another into custody. (Adopting s. 946.41(2), Stats.)

### **9.09 HARASSMENT.**

- (1) Whoever, with intent to harass or intimidate another person, does any of the following is guilty of harassment:
  - (a) Strikes, shoves, kicks or otherwise subjects the person to physical contact or attempts or threatens to do the same.
  - (b) Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose.
- (2) This section does not prohibit any person from participating in lawful conduct in labor disputes under s. 103.53, Stats.

### **9.10 UNLAWFUL USE OF A TELEPHONE.**

Whoever does any of the following is subject to a forfeiture:

- (1) With intent to harass or offend, telephones another and uses any obscene, lewd or profane language or suggests any lewd or lascivious act;
- (2) Makes or causes the telephone of another repeatedly to ring, within intent to harass any person at the called number;
- (3) Makes repeated telephone calls, whether or not conversation ensues, with intent solely to harass any person at the called number;
- (4) Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number; or
- (5) Knowingly permits any telephone under his or her control to be used for any purpose prohibited by this section.

### **9.101 UNLAWFUL USE OF COMMUNICATION DEVICES.**

- (1) Definitions.
  - (a) A communication device is a telephone, computer, personal communication devices such as an iPhone, Smartphone, iPad, or any similar device that uses telephone lines, the internet, cellular communication systems, or other electronic means to send messages to specific persons.

- (b) Message means any transmission of text, signs, signals, symbols, writing, images, sounds, data, or any ordered set of instructions or statements that, when executed by a computer, causes the computer to process data, (id est, a computer program).
- (2) Prohibited Conduct. No person shall use a communication device to send a message that threatens, harasses, or offends the recipient, whether the recipient is the intended recipient or another, because the content of the message is violent, threatening, abusive, indecent, profane, obscene, or otherwise intimidating or offensive and is of a nature generally not tolerated in the community and which serves no legitimate purpose.

### **9.11 LOITERING PROHIBITED.**

- (1) Loitering on public property.
  - (a) No persons shall loiter in or about any public street, sidewalk, street crossing, alley, bridge, public parking lot or other place of assembly or public use, or any school, after being requested to move by any law enforcement officer. Upon being requested to move, a person shall immediately comply with the request by leaving the premises or area at the time of the request.
- (2) Loitering on private property.
  - (a) 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, without invitation from the owner or occupant or by any person in authority at such places.
  - (b) No person shall loiter in or about the doorway, stairway, steps or entrance of any business place or private residence without the express consent of the owner, or at any time other than usual business hours.
  - (c) The prohibition of this section includes the loitering around public buildings at such times as they are closed for the usual and normal conduct of business. Upon being requested to move by any person in authority or by any law enforcement officer, a person shall immediately comply with the request by leaving the premises or area at the time of the request.
  - (d) No person shall sit, lie or otherwise recline upon or against any parked motor vehicle without the express consent of the owner thereof.

- (e) No person shall stand or loiter on any roadway other than in a safety zone if that conduct interferes with the lawful movement of traffic.
  - (f) Upon being requested to move by any person in authority or by any law enforcement officer, a person shall immediately comply with the request by leaving the premises or area at the time of the request.
- (3) Loitering generally. 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 within 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 the appearance of a law enforcement officer, whether the person refuses to identify himself or herself, or gives false identification, or manifestly endeavors to conceal himself or herself or any object. Prior to any arrest for an offense under this subsection, a law enforcement officer shall afford the person an opportunity to dispel any alarm which would otherwise be warranted, by requesting him or her to identify himself or herself and explain his or her presence and conduct.

#### **9.12 NUDE AND NEARLY NUDE DANCING AND ACTIVITIES.**

- (1) It shall be unlawful for a person to dance or engage in other activities on the premises of any establishment open to the public and/or licensed to sell intoxicating beverages if the person dances or engages in other activities in such a manner or utilizing such attire as to expose to view the following portions of the human anatomy less than completely or opaquely covered:
- (a) Human genitals and pubic region; or
  - (b) Cleavage of human buttocks; or
  - (c) That portion of the human female breast encompassed within an area falling below the horizontal line one would have to draw to intersect a point immediately above the top of the areola; this definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not so exposed; or
  - (d) Human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- (2) The proprietor or owner of a business open to the public who knowingly permits the nude or nearly nude activity described in subsection (1) on such premises shall

be subject to a forfeiture. Each performance, appearance or activity in violation of subsection (1) shall be a separate offense.

- (3) The proprietor or owner of a premises licensed to sell alcohol beverages for consumption on the premises who knowingly permits the nude or nearly nude activity described by subsection (1) on such premises shall have his or her license for said premises revoked for a period of not less than six months nor more than one year and shall be subject to a forfeiture. Each performance, appearance or activity in violation of subsection (1) shall be a separate offense.
- (4) Any person who performs nude or nearly nude dancing or activities in violation of subsection (1) shall themselves be subject to a forfeiture.

## **SUBCHAPTER II. OFFENSES AGAINST PROPERTY OR PROPERTY INTERESTS**

### **9.13 RETAIL THEFT; THEFT OF SERVICES.**

- (1) The terms “merchandise”, “merchant”, “service provider”, “theft detection device”, “theft detection device remover”, “theft detection shielding device”, and “value of merchandise”, have the meanings given to them by Wis. Stat. §943.50(1).
- (2) A person may be penalized as provided in sub. (5) if he or she does any of the following without the merchant’s consent and with the intent to deprive the merchant permanently of possession or the full purchase price of the merchandise or property:
  - (a) Intentionally alters indicia of price or value of the merchandise held for resale by a merchant or property of a merchant;
  - (b) Intentionally takes and carries away merchandise held for resale by a merchant or property of a merchant;
  - (c) Intentionally transfers merchandise held for resale by a merchant or property of a merchant;
  - (d) Intentionally conceals merchandise held for resale by a merchant or property of a merchant;
  - (e) Intentionally retains possession of merchandise held for resale by a merchant or property of a merchant;
  - (f) While anywhere in the merchant’s store, intentionally removes a theft detection device from merchandise held for resale by a merchant or property of a merchant;
  - (g) Uses, or possesses with intent to use, a theft detection shielding device to shield merchandise held for resale by a merchant or property of a merchant from being detected by an electronic or magnetic theft alarm sensor; or
  - (h) Uses, or possesses with intent to use, a theft detection device remover to remove a theft detection device from merchandise held for resale by a merchant or property of a merchant.
- (3) Any person may be penalized as provided in sub. (5) if, having obtained a service from a service provider, he or she, without the service provider’s consent and with intent to deprive the service provider permanently of the full price of the service, absconds and intentionally fails or refuses to pay for the service.

- (4)
  - (a) In any action or proceeding for violation of this section, duly identified and authenticated photographs of merchandise which was the subject of the violation may be used as evidence in lieu of producing the merchandise.
  - (b) For the purpose of sub. (5), evidence that a person sold by means of the internet merchandise that is similar to the merchandise that is the subject of a violation under sub. (2)(a)-(f) within 90 days before the violation, is prima facie evidence of the person's intent to sell the merchandise by means of the Internet.
  - (c) A merchant or a merchant's adult employee is privileged to defend property as prescribed in Wis. Stat. §939.49.
- (5) Whoever violates this section shall be subject to a forfeiture not to exceed \$500.00 plus the costs of the action.
- (6) In addition to the forfeiture provided by sub. (5), a judge may order a violator to pay restitution as provided in Wis. Stat. §943.50(5).

#### **9.131 THEFT.**

- (1) Whoever intentionally takes and carries away, uses, transfers, conceals, or retains possession of moveable property of another without the other's consent and with intent to deprive the owner permanently of possession of such property shall be subject to a forfeiture under sub. (2), including court costs as provided in Chapter 814 of the Wisconsin Statutes.
- (2) Any person found guilty of an act or acts described in sub. (1) shall forfeit not less than \$5.00 nor more than \$500.00.

#### **9.14 ISSUANCE OF WORTHLESS CHECKS.**

- (1) Whoever makes any check or other order for the payment of money which at the time of issuance, he or she intends shall not be paid shall be subject to a forfeiture.
- (2) Any of the following is prima facie evidence that the person, at the time he or she issued a check or other order for the payment of money, intended that it should not be paid:
  - (a) Proof that at the time of issuance the person did not have an account with the drawee.

- (b) 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 days after receiving written notice of nonpayment or dishonor to pay the check or other order, delivered by regular mail to either the person's last-known address or the address provided on the check or other order; or
  - (c) 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 days after receiving written notice of nonpayment or dishonor to pay the check or other order, delivered by regular mail to either the person's last-known address or the address provided on the check or other order.
- (3) This section does not apply to a postdated check.
  - (4) Whenever any person named as a payee of a check or order for money submits such check or order to the drawee more than one time, and such check or order is dishonored, the named payee may submit the check or order to the police department. The department shall notify the drawer of the check or order by regular first class mail at the drawer's last known address that the check or order has been dishonored and unless the amount of the check or order is paid to the department for the benefit of the named payee within five days, a citation shall be issued to the drawer under this Section. Whenever any person is notified by the department under this subsection, the five-day periods provided by subsections (2)(b) and (c) shall be computed from the date the department mailed the notice.
  - (5) Any person who is convicted of a violation of this section shall be subject to an order of restitution as determined by the court.

#### **9.15 DESTRUCTION OF PROPERTY.**

No person shall intentionally cause damage to any physical property of another without the person's consent.

#### **9.16 TRESPASS TO MUNICIPAL SWIMMING POOL.**

- (1) No person shall enter the enclosure surrounding the City swimming pool, or any of the pool buildings, nor shall any person swim in or enter the pool or otherwise trespass on pool property at any time during which the pool is closed to business, unless such person is an employee of the City engaged in duties within the scope of his or her employment, or unless the person has previously been authorized to enter or use the pool or pool buildings by the park commissioner or the Common Council.

## **9.17 BOAT LANDING REGULATIONS.**

- (1) “Boat Landing” means that parcel of land located within the City corporate boundaries which is designed and used for the launching and landing of boats and which lies westerly of U.S. Highway 61 and adjacent to the Wisconsin River.
- (2) No person shall pick any flower or damage in any way, any turf, plant, fence, post, bench, tarmac, structure or sign erected by any governmental body, or any other property in the boat landing.
- (3) No person shall make or kindle any fire in the boat landing except in fireplaces provided therefore, provided however that charcoal fires contained within grills designed for such fires may be built.
- (4) No person shall litter the boat landing with any refuse, including without limitation by way of enumeration, paper, aluminum, glass, plants, food, animals or animal parts.
- (5) The placing of any sign, picture, marker or notice within the boat landing is prohibited except by duly authorized agents or employees of the state or City of Boscobel.
- (6) No person shall launch or retrieve a boat, canoe, or other watercraft from the Boscobel Boat Landing without first obtaining a daily or seasonal launch pass. Said pass shall be displayed in a visible location on the rearview mirror or dashboard of the motor vehicle. Any person who has not obtained a launch pass is in violation of this Section.
- (7) Parking in Undesignated Parking Areas Prohibited. Parking at the Boat Landing is restricted to designated parking areas only. No person shall park any vehicle or trailer within an undesignated parking area including the grassy areas surrounding the boat landing and designated parking area.

Citations will be issued for parking in undesignated parking areas. Penalty for 1<sup>st</sup> offense is \$50.00 (fifty dollars). Penalty for each additional offense is \$100.00 (one hundred dollars). Vehicles parked in undesignated areas may be towed at the Owner’s Expense by a local towing company.

## **9.18 TRESPASSING.**

- (1) No person shall intentionally enter a dwelling of another, without the consent of someone lawfully on the premises, under circumstances tending to create or provoke a breach of the peace.

- (2) No person shall enter on the land of another without the express or implied consent of the owner or occupant. In determining whether a person has implied consent to enter the land of another a trier of fact shall consider all of the circumstances existing at the time the person entered the land, including all of the following:
  - (a) Whether the owner or occupant acquiesced to previous entries by the person or by other persons under similar circumstances;
  - (b) The customary use, if any, of the land by other persons;
  - (c) Whether the owner or occupant represented to the public that the land may be entered for particular purposes; and
  - (d) The general arrangement or design of any improvements or structures on the land.
- (3) No person shall enter or remain on any land of another after having been notified by the owner or occupant not to enter or remain on the premises.
- (4) No person shall operate, stand or park any motor vehicle, all-terrain vehicle, or snowmobile (as defined by Chapter 340, Stats.) on any land of another without the consent of the owner or occupant. For purposes of this section, no person shall be deemed to have implied consent to operate, stand or park any motor vehicle or snowmobile on the land of another, except that a person does have implied consent to operate, stand or park a motor vehicle on an established, unposted driveway of a business or residence for purposes of conducting business or conferring with someone lawfully at or in the residence. "Land of Another" includes all land owned by the City of Boscobel, except highways, streets, alleys and designated parking areas.
- (5) A person has received notice not to enter or remain on premises within the meaning of this section if he has been notified personally, either orally or in writing, or if the land is posted. Land is posted if it meets the requirements of Section 943.13, Stats., or, in cases of parcels less than 10 acres in area, if there is any clearly visible and legible sign on the premises indicating that trespassing is prohibited.

## **9.19 LIBRARY FINES.**

- (1) Except as provided in (2), any person who fails to return any item loaned to that person by the Hildebrand Memorial Library before the item becomes more than 40 days overdue, or any person who fails to pay the library fine imposed for the late return of the item, or both, shall forfeit an amount as provided by (3) hereof.

- (2) Any person who fails to return any item loaned to that person by the Hildebrand Memorial Library, which item was obtained by the library through the Wisconsin Statewide Interlibrary Loan System, before the item becomes more than seven days' overdue shall be subject to the forfeiture provided for by sub. (3). This subsection does not apply to items obtained from libraries that are members of the Southwest Wisconsin Library System.
- (3) Any person who violates a provision of this section shall be subject to a forfeiture of not less than \$25.00 nor more than \$200.00, plus the costs of the action.

## **9.20 THEFT OF LIBRARY MATERIALS.**

- (1) Definitions:
  - (a) Archives means a place in which public or institutional records are systematically preserved.
  - (b) Library means any public library; library of an educational or historical institution, organization or society; archives; or museum.
  - (c) Library material includes any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microform, sound recording, audio-visual materials in any format, magnetic or other tapes, electronic data processing records, artifacts or other documentary, written or printed materials, regardless of physical form or characteristics, belonging to, on loan to or otherwise in the custody of a library.
- (2) 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 with intent to deprive the library of possession of the material is subject to a forfeiture.
- (3) 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 the person or concealed by a person upon the person or among the belongings of another is evidence of intentional concealment on the part of the person so concealing the material.

- (4) An official or adult employee or agent of a library who has probable cause to believe 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 peace 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 for the detention and be permitted to make phone calls, but shall not be interrogated or searched against his or her will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. Compliance with this subsection 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.

## **SUBCHAPTER III. NUISANCES.**

### **9.21 LITTERING.**

- (1) No person shall throw, deposit or abandon any garbage, refuse, waste material or other property or substance upon the streets, alleys, highways, public parks or other property of the City; or upon the surface of any body or stream of water within the City; or upon any private property within the City without the consent of the owner of such property.
- (2) No person shall place, deposit or abandon any garbage, refuse, waste material or other property or substance in any approved container of another within the City. Approved container as used herein shall have the same meaning as provided in Section 11.07 of the Municipal Code.

### **9.22 ABANDONED / UNATTENDED REFRIGERATORS.**

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 or her control, in a place accessible to children, any abandoned, unattended or discarded icebox, refrigerator, freezer or other container which has an airtight door or lid, snap lock or other lock device, which cannot be released from the inside without first removing such door or lid, snap lock or other locking device from such icebox, refrigerator, freezer or container, unless the container is displayed for sale on the premises of the owner or his agent and is securely locked or fastened.

### **9.23 OPEN CISTERNS, WELLS, BASEMENTS OR OTHER DANGEROUS EXCAVATIONS PROHIBITED.**

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

### **9.24 REGULATION OF OUTDOOR FIRES.**

- (1) This ordinance applies to all outdoor burning and refuse burning within the City of Boscobel. This ordinance does not apply to grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances.

(2) DEFINITIONS:

- (a) Campfire is defined as a small outdoor fire intended for recreation or cooking, not including a fire intended for disposal of waste or refuse, and shall be controlled, maintained and observed at all times and under 36” in height.
- (b) Clean wood is defined as natural or vegetative wood which has not been milled, painted, varnished or coated with a similar material, has not been pressure treated with preservatives and does not contain resins or glues as in plywood or other composite wood products.
- (c) Refuse is defined as any waste material except clean wood.

(3) PERMITTED BURNING:

- (a) A campfire as described in 2(a) above with only clean wood as described in 2(b) above.

(4) PROHIBITED BURNING:

- (a) Materials that may not be burned are as follows: rubbish or garbage, including, but not limited to, food wastes, food wraps, packaging, animal carcasses, paint or painted materials, furniture, composite shingles, construction or demolition debris, leaves or other household or business wastes; asphalt and products containing asphalt; treated or painted wood, including, but not limited to, plywood, composite wood products or other wood products that are painted, varnished or treated with preservatives; any plastic material, including, but not limited to, nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, plastic films and plastic containers; rubber, including tires and synthetic rubber-like products; newspaper, corrugated cardboard, container board, office paper and other materials that must be recycled in accordance with the recycling ordinance.
- (b) The intentional burning of any substance on a highway, street, alley, public right-of-way, or public park or ground is prohibited.
- (c) No person shall by means of fire damage, demolish or destroy any building or structure. On application to the Common Council, the fire department may be granted a permit for the controlled burning of a building or structure.
- (d) A police officer has the discretion to deem whether a fire is unsafe, uncontrolled, unattended or a nuisance and may extinguish said fire.

(5) PENALTY:

- (a) Violation of this section may result in a forfeiture of up to \$100, plus court costs.

**9.241 CHRONIC NUISANCES.**

(1) Definitions.

- (a) “Chronic Nuisance Premises” means a premises meeting the following criteria: a place where activities have been the cause of three or more calls for police services that have resulted in enforcement actions for nuisance activities on three separate dates in a 90-day period. Three or more calls for police services resulting in an enforcement action for nuisance activities include any enforcement action taken against any person associated with the premises, including without limitation an owner or a renter of the premises, or a guest of either, while the person is at the premises or is within 200 feet of the premises. Enforcement actions that result from calls made by the owner of the premises or an on-site manager of the premises shall not be counted in a determination that there is a chronic nuisance premises.
- (b) “Chronic Nuisance Premises Notice” is a notice issued by the Chief of Police that declares that a premises is a chronic nuisance premises. The Notice shall inform the owner of the premises that the Chief of Police has determined the premises is a chronic nuisance and shall contain the following information:
- (i) The identity of the premises by street address, tax parcel number, a legal description, or other description that reasonably identifies the premises;
  - (ii) A summary of the enforcement actions that have occurred and on which the Chief has based the determination;
  - (iii) That the cost of future enforcement may be imposed as a special charge against the premises pursuant to Wis. Stat. §66.0627(2) for police and other services rendered;
  - (iv) That within 10 days of service of the Notice the owner is required to submit to the Chief of Police a written plan to put an end to the nuisance activities;

- (v) That within 10 days of service of the Notice the owner is required to schedule a meeting with the Chief of Police to discuss the owner's plan for abatement of the nuisance activities;
  - (vi) That the owner may be subject to a forfeiture action for permitting a chronic nuisance premises to continue to exist; that if the owner fails to respond to the Notice within 10 days as directed or that if the owner fails to schedule a meeting with the Chief of Police as directed, a forfeiture action may be commenced against the owner; and that the range of the forfeiture penalty shall be not less than \$250.00 plus costs, or \$452.50, nor more than \$2,000.00 plus costs, or \$2,667.50.
- (c) "Enforcement Action" is an arrest that results in the transportation and detention of the arrestee; conviction for a nuisance activity that is a violation of the Municipal Code; the filing of a summons and criminal complaint by the district attorney's office, regardless of outcome; or a police presence at a premises that is the result of a false report or prank call.
- (d) "Nuisance Activities" include the following:
- (i) Any activity that results in criminal charges being brought against any person associated with the premises;
  - (ii) Ordinance violations under the Municipal Code against any person associated with the premises for following offenses: any offense under Subchapter I of Chapter 9; Section 9.15, Destruction of Property; any offense under Subchapter III of Chapter 9; and Section 9.23, Possession of Marijuana and Drug Paraphernalia; and
  - (iii) Requesting the assistance of the police or reporting a violation of the law by a person associated with the premises that results in a police presence made without any legitimate or justifiable reason.
- (2) Procedure.
- (a) When the Chief of Police determines there is a Chronic Nuisance Premises within the City, the Chief shall issue a Chronic Nuisance Premises Notice to the owner. Service of the Notice may be made by regular first class mail to the owner's address as it appears on the current tax roll. Service by mail is complete upon mailing. Other means of service may be employed if they are at least as reliable as regular first class mail, including registered mail. If registered mail is used, service is deemed completed one day after mailing.

- (b) If the owner responds to the Notice, the Chief shall review the required plan with the owner. If the plan appears that it will result in abatement of the nuisance activities described in the Notice, the Chief shall accept the plan. If the owner then implements the plan, the City will delay any further enforcement under this section.
  - (c) If the owner fails to respond to the Notice as directed, either by failing to submit a plan or by failing to schedule a meeting with the Chief, the owner will be subject to a forfeiture action for violation of this section.
  - (d) If the owner fails to implement an approved plan, or if the owner fails to follow through with a plan that has been approved and implemented, the owner will be subject to a forfeiture action for violation of this section.
  - (e) If an owner submits an unacceptable plan, but meets with the Chief as required by this section, the Chief shall work with the owner to craft an acceptable plan. Any provision of a plan required by the Chief shall become a part of the plan; any provision proposed in the plan by the owner that is rejected by the Chief shall not be a part of the plan. The owner shall be required to implement the plan that results from this process.
- (3) Violations. In addition to the foregoing, the following are violations of this Ordinance and shall subject to the owner to a forfeiture action:
- (a) Failure to respond to a Chronic Nuisance Premises Notice;
  - (b) Failure to implement a plan, or to carry out an implemented plan;
  - (c) An enforcement action occurs as a result of a nuisance activity that involves a chronic nuisance premises after a plan has been approved and within 180 days of approval of a plan.
- (4) Nuisance Abated. If no enforcement action occurs within 180 days after a premises has been declared to be a chronic nuisance premises, then the public nuisance created by the premises will be deemed to have been abated. Any subsequent determination that the premises is a chronic nuisance premises shall be based on the same criteria that were used under this Ordinance to make the previous determination.
- (5) Penalties.
- (a) Forfeiture. An owner who violates this Ordinance shall forfeit not less than \$250.00 nor more than \$2,000.00, plus the costs of the action.
  - (b) Special assessments or special charges. In the event an enforcement action occurs within 180 days after an abatement plan has been approved,

the Chief of Police shall keep an accurate account of the costs of enforcement which shall be calculated based on the pay and benefit scale of the officer or officers involved in any enforcement action; the amount of time an officer has spent dealing with the enforcement action; the amount of time the Chief spends on preparing and serving a Chronic Nuisance Premises Notice and the costs of service; the amount of time the Chief spends in reviewing and developing an abatement plan with the owner; and the time the city attorney spends dealing with the enforcement action. The special charges for services rendered shall be levied as a special assessment against the nuisance premises and collected in the manner of other real estate taxes. These special charges for services rendered shall be collected only for services rendered in enforcement actions involving a premises that has been issued a Chronic Nuisance Premises Notice or in actions taken against an owner for a violation of this section.

## **SUBCHAPTER IV. ANIMALS**

### **9.25 REGULATION OF ANIMALS.**

- (1) Definitions.
  - (a) Domestic fowl means any of several, usually gallinaceous, birds that are barnyard or domesticated, including, but not limited to, chickens, turkeys, ducks, geese, guinea fowl, emus, ostriches, and the like.
  - (b) Livestock means cattle and other useful domestic animals usually kept or raised on a farm or ranch, including, but not limited to, horses, cows, steers, bulls, sheep, swine, hogs, goats, llamas, burros, donkeys, ponies, mules, oxen, yaks, water buffalo, and the like.
  - (c) Wildlife means undomesticated animals which usually live in the wild, including those hunted or trapped for food, sport, or profit.
- (2) Animals at large prohibited. No person who owns or has custody of an animal shall permit or allow, either intentionally or unintentionally, the animal to be at large in the City.
- (3) Animals prohibited in the City. No person shall keep or maintain any domestic fowl, livestock, or wildlife in the City.
- (4) Limitation on number of pets. No person or persons shall keep or maintain more than three cats or three dogs, or a combination thereof exceeding three, on his, her, or their premises in the City.
- (5) Exception for temporary presence. This ordinance shall not be construed to prohibit the temporary presence of animals in the City for purposes of transportation, or showing at fairs, parades, or other exhibitions, provided the presence in the City of an animal for such a purpose does not exceed 72 hours.

### **9.251 ANNOYING DOGS.**

No person shall keep any dog that annoys or disturbs the people who live near or in close proximity to the place where the animal is kept by frequent or incessant barking, howling, baying, or the making of other noises.

### **9.26 CRUELTY TO ANIMALS / ABANDONMENT.**

No person, other than a peace officer, humane officer or health officer acting in an official capacity, shall shoot or kill any animal in the City. No person may treat any animal, whether belonging to the person or another, in a cruel manner. No person may disturb any nest or den of any animal. No person may abandon any animal in the City.

## **9.27 CONTROL OF ANIMAL FECES.**

- (1) No person shall permit any animal to be on any public property, including a highway or sidewalk as defined in Wis. Stat. §340.01, or on any private property in which the person has no ownership interest or tenancy, unless that person has in his or her immediate possession a device for removing the animal's excrement and for transporting it for disposal. The person shall within a reasonable time after an excretion by the animal clean up and dispose of the excrement in a suitable place and manner. This Section shall not apply to a disabled person who uses a dog for assistance in living if the disability is such that the person is unable to comply.
- (2) Any person who violates this section shall forfeit \$50, and court costs and assessments.

## **SUBCHAPTER V. CHILDREN AND SCHOOLS**

### **9.28 CURFEW FOR MINOR PERSONS.**

- (1) Responsibility of Parents. It shall be unlawful for the parent, guardian or other adult person having the care and custody of a person under the age of 18 years to suffer or permit or by inefficient control to allow any such minor to congregate, loiter, wander, stroll, stand or play in or upon the public streets, highways, roads, alleys, parks, public buildings, places of amusement and entertainment, vacant lots or any public places in the City of Boscobel between the hours of 11:00 p.m. and 5:00 a.m. of the following day, official City time, unless the minor is accompanied by his or her parent, guardian or other adult person having his or her care, custody or control; provided that any parent, guardian or other adult person herein who shall have made a missing person notification to the police department shall not be considered to have suffered or permitted any minor to be in violation of this section.
- (2) Loitering of Minors (Curfew Hours). It shall be unlawful for any person under the age of 18 years to congregate, loiter, wander, stroll, stand or play in or upon the public streets, highways, roads, alleys, parks, public buildings, places of amusement and entertainment, vacant lots or any public places in the City of Boscobel, either on foot or in or upon any conveyance being driven or parked thereon, between the hours of 11:00 p.m. and 5:00 a.m. of the following day, official City time, unless accompanied and supervised by his or her parent, guardian or other adult person having his or her care, custody or control.
- (3) Penalty. Any adult violating the provisions of this section shall forfeit \$50.00 upon conviction thereof. A minor person shall forfeit not more than \$25.00, provided that for a first offense, any person 16 years of age or less shall be warned of the penalty for such violation by the peace officer apprehending him or her and shall be taken and delivered to the custody of the person having legal custody over him or her.

### **9.29 SMOKING ON SCHOOL PROPERTY PROHIBITED.**

Any person violating a school board prohibition, adopted pursuant to s. 120.12(20), forbidding the use of all tobacco products on premises owned or rented by, or under the control of, a school board shall be subject to a forfeiture not to exceed \$25.00.

### **9.30 TOBACCO PRODUCTS: PURCHASE OR POSSESSION BY, OR SALE TO CHILDREN PROHIBITED.**

Restrictions on sale or gift of cigarettes, tobacco products or nicotine products.

- (1) In this section:

- (a) “Cigarette” has the meaning given in Wisconsin Statute Section 139.30(1)(m).
  - (b) “Law enforcement officer” has the meaning given in Wisconsin Statute Section 165.85(2)(c).
  - (c) “Tobacco products” has the meaning given in Wisconsin Statute Section 139.75(12).
  - (d) “Nicotine product” has the meaning given in Wisconsin Statute Section 134.66(1)(f).
- (2) Except as provided in sub. (3), no person under 18 years of age may do any of the following:
- (a) Buy or attempt to buy any cigarette, tobacco products or nicotine product.
  - (b) Falsely represent his or her age for the purpose of receiving any cigarette, tobacco products or nicotine product
  - (c) Possess any cigarette, tobacco products or nicotine product
- (3) A person under 18 years of age may purchase or possess cigarettes, tobacco products or nicotine products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer licensed under s. 134.65(1)
- (4) A law enforcement officer shall seize any cigarette, tobacco products or nicotine products involved in any violation of sub. (2) committed in his or her presence.
- (5) A person under 18 years of age who violates sub. (2) shall forfeit \$25.00 plus costs of the action.

### **9.31 TRUANCY AND SCHOOL DROPOUTS.**

- (1) Definitions.
- (a) “Dropout” means a child under the age of 18 years who ceases to attend school, does not attend a public or a private school, technical college or home-based private educational program on a full-time basis, has not graduated from high school, or is not excused from attendance under Section 118.15, Stats.

- (b) “Habitual Truant” means a pupil who is absent from school without an acceptable excuse for part or all of five or more days on which school is held during a school semester.
  - (c) “Truant” means a pupil who is absent from school without an acceptable excuse for part or all of any day on which school is held during a school semester.
- (2) No person under the age of 18 years shall be a truant.
- (3) No person under the age of 18 years shall be a habitual truant.
- (4) No person under the age of 18 years may be a dropout as defined in this section.
- (5) Any person who violates sub. (2), or his or her parent or guardian, or both, shall forfeit \$25.00 plus costs for a first violation, and \$50.00 plus costs for a second or subsequent violation within 12 months of a previous violation, provided however, that no costs may be assessed against a person under the age of 14 years nor may forfeitures assessed for such violations exceed \$500.00 during any school semester. The parents or guardian of a person under the age of 14 years may be assessed costs under this section.
- (6)
  - (a) Any person who violates sub. (3) may be ordered to participate in counseling or a supervised work program or other community service work as described in Section 938.34(5g), Stats. The costs therefore may be assessed against the violator, his or her parents or guardian, or both.
  - (b) A person who violates sub. (3) may be ordered to remain at home except during hours in which the person is attending religious worship or a school program, including travel time required to get to and from the place of worship or school program. Such an order may permit the violator to leave home if accompanied by a parent or guardian.
  - (c) A person violating sub. (3) may be ordered to attend an educational program as described in Section 938.34(7d), Stats.
  - (d) A person who violates sub. (3), or his or her parents or guardian, may be ordered to forfeit not more than \$500.00 plus costs, except no costs may be assessed against a person under the age of 14 years, provided, however, costs may be assessed against the parents or guardian of a person under the age of 14 years.
- (7) A court may suspend the operating privilege of any person who is a dropout as defined in this section.

**SUBCHAPTER VI. POSSESSION OF MARIJUANA AND DRUG PARAPHERNALIA AND DELIVERY THEREOF.**

**9.32 DEFINITIONS**

(1) DEFINITIONS.

- (a) “Marijuana” means all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. “Marijuana” does include the mature stalks if mixed with other parts of the plant, but does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.
- (b) “Possession” means that the person knowingly had actual physical control of the marijuana, as defined in subsec. (a). Marijuana is in a person’s possession if it is in an area over which the person has control and the person intends to exercise control over the marijuana. A person does not have to own the marijuana in order to possess it. What is required is that the person exercise or intends to exercise control of the marijuana. Possession of marijuana may be shared with another person. If a person exercises control over the marijuana, it is in his or her possession, even though another person may also have similar control.
- (c) “Drug paraphernalia” has the meaning of that term as it is defined in Wis. Stat. §961.571(1) & (2).

- (2) POSSESSION OF MARIJUANA PROHIBITED, EXCEPTIONS. No person may be in possession of marijuana. This ordinance shall not be enforced against any person in possession of more than 25 grams of marijuana nor shall it be enforced against a person who has had a prior conviction of possession of marijuana under any state law or municipal ordinance. This prohibition does not apply to any person who obtains marijuana directly from, or pursuant to a valid prescription or order of, a practitioner who is acting in the course of his or her professional practice, or unless the person is otherwise authorized under Chapter 961 of the Statutes to possess marijuana.

- (3) **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 Chapter 961 of the Statutes.
- (4) **MANUFACTURE OR DELIVERY OF DRUG PARAPHERNALIA.** No person may deliver, possess with intent to deliver, or manufacture 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 Chapter 961 of the Statutes.
- (5) **DELIVERY OF DRUG PARAPHERNALIA TO A MINOR.** No person 17 years of age or over may deliver drug paraphernalia to a person who is 17 years of age or under and who is at least 3 years younger than the deliverer.
- (6) **PENALTY.** Any person convicted of a violation of this section shall forfeiture not less than \$5.00 nor more than \$500.00 plus court costs, penalty surcharge, jail surcharge, crime and drug lab surcharge, court support surcharge and justice information surcharge. The Common Council shall from time-to-time by resolution or other means establish the amount of the forfeiture and bond or cash deposit permitted under Wis. Stat. §66.0111.

**SUBCHAPTER X. MISCELLANEOUS PROVISIONS APPLICABLE TO CHAPTER 9  
PENALTIES**

**9.95 PARTIES TO AN OFFENSE.**

- (1) Whoever commits an offense under this Chapter is a principal and may be charged with and convicted of an offense although the person did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other degree of the offense based on the same act.
- (2) A person is concerned in the commission of an offense if the person:
  - (a) Directly commits the offense;
  - (b) Intentionally aids and abets the commission of it; or
  - (c) Is a party to a conspiracy with another to commit it or hires, advises, counsels or otherwise procures another to commit it. Such a party is also concerned in the commission of any other offense which is committed in pursuance of the intended offense and which under the circumstances is a natural and probable consequence of the intended offense. This paragraph does not apply to a person who voluntarily changes his or her mind and no longer desires that the offense be committed and notifies the other parties concerned of his or her withdrawal within a reasonable time before the commission of the offense so as to allow the others also to withdraw. (Adopting s. 939.05, Stats.)

**9.96 JURISDICTION OF CITY OVER OFFENSES.**

A person is subject to prosecution and penalty under this chapter if:

- (1) The person commits an offense in this City; or
- (2) While out of the City, the person aids and abets, conspires with, or advises, incites, commands or solicits another to commit an offense in the City; or
- (3) While out of the City, the person does an act with intent that it causes in the City a consequence set forth in a section defining an offense.

**9.97 INTOXICATION.**

An intoxicated or drugged condition of a person charged with an offense under this chapter is a defense only if that condition is involuntarily produced and renders the person incapable of distinguishing between right and wrong in regard to the alleged offense at the time the offense is committed.

**9.98 PROSECUTION UNDER MORE THAN ONE SECTION PERMITTED.**

If an act forms the basis for an offense punishable under more than one of the provisions in this chapter, prosecution may proceed under any or all such provisions.

**9.99 PENALTIES.**

Any person violating any of the provisions of this Chapter not containing a specific forfeiture therein shall be subject to the following forfeitures:

- (1) Those forfeitures provided in Section 25.04 of this Code.
- (2) In addition to any penalty imposed for violation of Section 9.15, any person who shall physically damage or destroy any public property shall be liable for the costs of replacing or repairing such damaged or destroyed property in accordance with s. 895.035, Stats.