

Title 11 ► Chapter 6

Public Nuisances

- 11-6-1** Title; Authority; Public Nuisances Prohibited
- 11-6-2** Definitions
- 11-6-3** Public Nuisances Affecting Health or Safety
- 11-6-4** Public Nuisances Offending Morals and Decency
- 11-6-5** Public Nuisances Affecting Peace and Safety
- 11-6-6** Public Nuisances Regarding Motor Vehicles, Junk, Recreational Equipment or Firewood
- 11-6-7** Abatement of Public Nuisances
- 11-6-8** Costs of Abatement
- 11-6-9** Enforcement; Penalties
- 11-6-10** Chronic Nuisance Properties

Sec. 11-6-1 Title; Authority; Public Nuisances Prohibited.

- (a) **Title/Purpose.** The title of this Chapter is the Village of Elk Mound Public Nuisance Ordinance. The purpose of this Chapter is to regulate for public health and safety reasons public nuisances and certain uses and activities in the Village of Elk Mound.
- (b) **Authority.** The Village Board has the specific authority under Secs. 29.038, 66.0407, 66.0413, 125.14, 169.01 and 175.25, and Ch. 823, Wis. Stats., to adopt this Chapter.
- (c) **Public Nuisances Prohibited.** No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance as defined herein within the Village of Elk Mound, or allow or permit other persons to cause, create, or maintain any public nuisance on property under his/her control..

State Law Reference: Secs. 29.038, 66.0407, 66.0413, 125.14, 169.01 and 175.25, and Ch. 823, Wis. Stats.

Cross-Reference: Title 15, Chapter 4, Property Maintenance.

Sec. 11-6-2 Definitions.

The following definitions shall be applicable in this Chapter:

- (a) **Agricultural Use.** Any beekeeping, commercial feed lots, dairying, egg production, floriculture, fish or fur farming, forest and game management, grazing, livestock raising,

orchards, plant greenhouses and nurseries, poultry raising, raising of grain, grass, mint and seed crops, raising of fruits, nuts and berries, sod farming, placing land in federal programs in return for payments in kind, owning land, at least thirty-five (35) acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836, participating in the milk production termination program under 7 USC 1446(d), and vegetable raising.

- (b) **Appliance.** Any household or office device, instrument, utensil, or apparatus or machine that utilizes power, including, but not limited to, any stove, washer, dryer, refrigerator, dishwasher, freezer, water heater, water pump, furnace, television set, home entertainment device, any computer or peripheral device or other electronic device.
- (c) **Building.** Any building or structure or any portion of a building or structure.
- (d) **Debris.** Any litter, junk, wood, bricks, paper, cement, concrete blocks, or any other unsightly accumulation of items or materials that may tend to depreciate property values in the adjacent or near area, create a blighted condition, present a substantial threat to public health or safety, create a public nuisance or public safety or health hazard, except when such items are determined by the Village Board, Village committee or other agent of the Village to be stored or housed out of public view and are not treated and maintained so as to be a public nuisance.
- (e) **Equipment.** Goods used or bought for use primarily in a business or profession, including farming.
- (f) **Hazardous Waste.** Any solid waste identified by the Wisconsin Department of Natural Resources as hazardous under Sec. 291.05(2), Wis. Stats., or its successor provisions.
- (g) **Junk.** Scrap metal, metal alloy, wood, concrete, synthetic or organic material, or any junked, inoperative, unlicensed, or unregistered motor vehicle structures, equipment, furniture, appliances, or machinery, or any part thereof. This definition of junk includes refuse, used tires, parts of dismantled buildings, agricultural use equipment not in usable condition, parts of agricultural use equipment, and contaminated recyclable material.
- (h) **Junked.** Dismantled for parts or scrapped.
- (i) **Junkyard.** Any place which is owned, maintained, operated or used for storing, keeping, processing, buying or selling junk, including refuse dumps, garbage dumps, automobile graveyards, scrap metal processors, auto-wrecking yards, salvage yards, auto-recycling yards, used auto parts yards and temporary storage of automobile bodies or parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises, and sanitary landfills. The definition does not include litter, trash, and other debris scattered along or upon the highway, or temporary operations and outdoor storage of limited duration.
- (j) **Local Zoning and Land Use Regulation.** Any applicable Village zoning, subdivision, land division, platting, official map, building code, building permit, or other ordinance adopted pursuant to general police powers that is applicable in any manner to the use of land.
- (k) **Machinery.** A device or assemblage of parts that transmits forces, motion or energy from one part to another in a predetermined way by electrical, mechanical or chemical means. "Machinery" does not include a building.

-
- (l) **Motor Vehicle.** A vehicle, including a combination of two (2) or more vehicles or an articulated vehicle, that is self-propelled, except a vehicle operated exclusively on a rail, with or without a current and valid registration issued by the State of Wisconsin or other state to the owner of the vehicles.
- (m) **Not Registered.** In reference to all-terrain vehicles, as defined in Sec. 340.01(2g), Wis. Stats., "snowmobiles" as defined in Sec. 340.01(58a), Wis. Stats., or "boat" as defined in Sec. 29.001(16), Wis. Stats., are those that are required to, but do not have nor bear any current and valid State of Wisconsin registrations.
- (n) **Public Nuisance.**
- (1) Those acts, omissions, occupations, conditions, or uses of property that continue for such a length of time as to threaten, impair, or affect the health, welfare, comfort, or safety of the public including, but not limited to, causing the following impacts:
 - a. Substantially annoy, injure or endanger the comfort, health, welfare, or safety of the public;
 - b. In any way render the public insecure in life or in the use of property;
 - c. Greatly offend the public morals or decency;
 - d. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property.
 - e. Any condition or use of premises or of building exteriors which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which such premises are located.
 - f. Render the soil, water, air or any article of food or drink impure, noxious, unwholesome, or unhealthy.
 - g. In any way render the public health, welfare, comfort or safety insecure in life or in the use of property.
 - (2) Any condition or use of premises or of building exteriors which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which such premises are located.
 - (3) Includes a nuisance property as defined in Section 10-5-8, chronic nuisance premises and nuisance activities defined in Section 11-6-10(b), and other nuisances as identified and/or defined in this Chapter.
- (o) **Recyclable Material.** Material that is suitable for recycling.
- (p) **Scrap Metal Processor.** A fixed location at which machinery and equipment are utilized for the processing and manufacturing of iron, steel or nonferrous metallic scrap into prepared grades and whose principal product is scrap iron, scrap steel, or nonferrous metal scrap for sale for remelting purposes.
- (q) **Solid Waste.** Any garbage, refuse, sludge, ash, paper, wood, metal, glass, cloth, plastic, lumber, concrete, food waste, and other organics, boxes, barrels, and other containers, tires,

and other like materials. "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solids or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Ch. 283, Wis. Stats., or source material, as defined in Secs. 254.31(1), Wis. Stats., special nuclear material as defined in Sec. 254.31(11), Wis. Stats., or byproduct material, as defined in Sec. 254.31(1), Wis. Stats. "Solid waste" includes paper, wood, metal, glass, cloth, plastic, lumber, concrete, food waste, and other organics, boxes, barrels, and other containers, tires and other like materials, debris and junk.

- (r) **Solid Waste Facility.** A facility for solid waste treatment, solid waste storage or solid waste disposal, and includes commercial, industrial, municipal, state and federal establishments or operations such as, without limitation because of enumeration, sanitary landfills, dumps, land disposal sites, incinerators, transfer stations, storage facilities, collection and transportation services and processing, treatment and recovery facilities. This term includes the land where the facility is located. This term does not include a facility for the processing of scrap iron, steel or nonferrous metal using large machines to produce a principal product of scrap metal for sale or use for remelting purposes. This term does not include a facility which uses large machines to sort, grade, compact or bale clean wastepaper, fibers or plastics, not mixed with other solid waste, for sale or use for recycling purposes. This term does not include an auto junk yard or scrap metal salvage yard.
- (s) **Village Committee.** A committee or commission established by the Village Board to address and aid in regulation of those uses and activities that may cause public nuisance or public health and safety threats in the Village of Elk Mound.
- (t) **Unlicensed or Unregistered.** In reference to motor vehicles, mobile homes, manufactured homes, camper trailers, recreational vehicles, truck bodies, semi-trailers, or trailers, are those that are required for operation in the state, but do not have nor bear required current and valid State of Wisconsin licenses or registration.
- (u) **Vehicle.** Every device in, upon, or by which any person or property is or may be transported. "Vehicle includes, but is not limited to, all of the following:
 - (1) **Aircraft** as defined in Sec. 29.001(16), Wis. Stats.
 - (2) **All-Terrain vehicles** as defined in Sec. 340.01(2g), Wis. Stats.
 - (3) **Antique vehicles** as described in Sec. 341.265, Wis. Stats.
 - (4) **Automobiles** as defined in Sec. 340.01(4), Wis. Stats.
 - (5) **Boats** as defined in Sec. 29.001(16), Wis. Stats.
 - (6) **Camping trailers** as defined in Sec. 340.01(6m), Wis. Stats.
 - (7) **Farm equipment** as defined in Sec. 100.47(1), Wis. Stats.
 - (8) **Farm tractors** as defined in Sec. 340.01(16), Wis. Stats.

- (9) **Hobbyist or homemade vehicles** as defined in Sec. 341.268, Wis. Stats.
 - (10) **Junk vehicles** as defined in Sec. 340.01(25j), Wis. Stats.
 - (11) **Implements of husbandry** as defined in Sec. 340.01(24), Wis. Stats.
 - (12) **Manufactured homes** as defined in Sec. 101.91(2), Wis. Stats.
 - (13) **Mobile homes** as defined in Sec. 340.01(29), Wis. Stats.
 - (14) **Mopeds** as defined in Sec. 340.01(29m), Wis. Stats.
 - (15) **Motor bicycles** as defined in Sec. 340.01(30), Wis. Stats.
 - (16) **Motor buses** as defined in Sec. 340.01(31), Wis. Stats.
 - (17) **Motor homes** as defined in Sec. 340.01(33m), Wis. Stats.
 - (18) **Motor trucks** as defined in Sec. 340.01(34), Wis. Stats.
 - (19) **Motorcycles** as defined in Sec. 340.01(32), Wis. Stats.
 - (20) **Railroad trains** as defined in Sec. 340.01(48), Wis. Stats.
 - (21) **Recreational vehicles** as defined in Sec. 340.01(48r), Wis. Stats.
 - (22) **Road machinery** as defined in Sec. 340.01(52), Wis. Stats.
 - (23) **Road tractors** as defined in Sec. 340.01(53), Wis. Stats.
 - (24) **Salvage vehicles** as defined in Sec. 340.01(55g), Wis. Stats.
 - (25) **School buses** as defined in Sec. 340.01(56), Wis. Stats.
 - (26) **Semi trailers** as defined in Sec. 340.01(57), Wis. Stats.
 - (27) **Snowmobiles** as defined in Sec. 340.01(58), Wis. Stats.
 - (28) **Special interest vehicles** as defined in Sec. 341.266, Wis. Stats.
 - (29) **Trailers** as defined in Sec. 340.01(71), Wis. Stats.
 - (30) **Truck tractors** as defined in Sec. 340.01(73), Wis. Stats.
 - (31) **Unlicensed demolition motor vehicles, unlicensed racing motor vehicles, and go carts, garden tractors, riding lawn mowers, and other motorized tractors, motorized carts, and motorized utility vehicles** that require no registration or licensure by the State of Wisconsin.
- (v) **Wild Animal.** Any animal of a wild nature that is normally found in the wild and that is not a domestic animal.

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

No person may create, contrive, erect, maintain, cause, continue, install, construct or permit to exist in the Village of Elk Mound a public nuisance associated with, causing, or likely to cause danger, disturbance, or injury to the public health or safety. The following acts, uses, activities, things, occupations, places or physical conditions, not properly and timely removed, after written notice to remove from the Village Board to any owner or occupant of the land where the act, use, activity, thing, occupation, place, or physical condition exists, is located, or occurred or to any person responsible for the creation, maintenance, or providing of the act, use, activity, thing, occupation, place, or physical condition, are specifically declared to be public health nuisances

but such enumeration shall not be construed to exclude other health nuisances from coming within the definition of Section 11-6-2:

- (a) **Noxious Weed Areas.** Pursuant to Sections 8-1-4, 8-1-5 and 8-1-6, any place in the Village where noxious weeds conditions are over eight (8) inches high, are located on private or public land conditions and are not timely cut or removed within five (5) days after posting or publication of a notice to destroy noxious weeds under Sec. 66.0407, Wis. Stats. and Section 8-1-3 or within the specified days after receipt of written notice to remove such weeds from the Village Board or designee.
- (b) **Unburied Animal Carcass Areas.** Any place in the Village of Elk Mound where unburied animal or bird carcasses are located on private or public land and are not timely removed or discarded, including timely burial in a sanitary manner, within forty-eight (48) hours of death. This Subsection does not apply to any animal or pet cemetery approved in writing by the Village of Elk Mound.
- (c) **Noxious or Polluted or Waste Areas.** Any place in the Village where noxious, nauseous, unwholesome, or polluted water and waste are located on private or public land, including on adjacent Village roads, highways, bridges, sidewalks, alleys, or other public lands owned or controlled by the Village and these conditions are not timely removed within the time specified in the written notice from the Village Board or designee.
- (d) **Noxious Emission Odor Areas.** Any place in the Village where noxious odor, stench, or gas escape or is emitted into the open air from sources located on public or private land, and these conditions are not timely removed or discontinued within the time specified in the written notice to remove from the Village Board. "Noxious odor" means an odor that is extremely repulsive to the senses of ordinary persons in the Village that seriously annoys or causes serious discomfort or serious injury to the health or causes serious inconvenience to the health or safety of a significant number of persons within the Village, as determined by the Village Board.
- (e) **Rat or Vermin Areas.** Maintenance through act or omission of breeding places for rats, insects, or other vermin including, but not limited to, accumulations of decayed animal carcasses, vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal, or any material in which flies, mosquitoes, disease carrying insects, rats, and other vermin can breed.
- (f) **Unauthorized Human Burial Area.** Any place in the Village where the body of a deceased person or parts of a deceased person are located and buried on private or public land in the Village without written approval of the Village Board and are not timely removed within the time specified in the written notice to remove from the Village Board. This Subsection does not apply to any established cemetery or burial site grounds approved, owned and operated in accordance with Ch. 157, Wis. Stats.
- (g) **Hazardous, Toxic or Solid Waste Facility or Site Areas.** Any place or solid waste facility in the Village of Elk Mound where the discharge, disposal, storage or treatment of hazardous, toxic, or solid waste occurs on private or public lands without approval and licensing or permitting of the discharge, disposal, storage or treatment by all proper federal, state, county and Village governing authorities and full compliance with all applicable laws,

rules, regulations or ordinances of the federal, state, county or Village, and the activity or condition is not timely removed or discontinued within thirty (30) days after receipt of written notice to remove from the Village Board. To constitute a public nuisance under this Subsection, an area, facility or site must be in violation of zoning or regulatory standards and/or threaten or cause serious discomfort or serious injury to the health or cause serious inconvenience to the health or safety of a significant number of persons within the Village of Elk Mound, as determined by the Village Board.

- (h) **Dangerous Wild Animal Areas.** Any place in the Village of Elk Mound where live dangerous wild animals are kept, sold, or in any manner controlled or possessed on private or public land without written approval of the Village Board and/or in violation of any applicable animal control ordinance in Title 7, Ch. 1 of this Code of Ordinances, and the animals are not removed or destroyed within the time specified in the written notice from the Village Board unless written approval of the Village Board is obtained within said time. To constitute a dangerous wild animal, under this Subsection, the species of animal must pose a threat to the safety of persons within the Village, including a keeper of such animal, as determined by the Village Board. It is not necessary that the Village Board find that a specific animal is dangerous in order to find a nuisance under this Subsection.
- (i) **Improper Sewage Areas.** Any place in the Village where effluent is not properly contained from a septic system, sewer lateral, holding tank, cesspool, or other human waste container located on private or public land and the problem is not corrected within the time specified in the written notice to remove from the Village Board or designee.
- (j) **Dangerous or Dilapidated Buildings.** Any place in the Village where a building or structure, the contents therein, or any associated electrical, heat, water or sewer system located on public or private lands is so old, dilapidated, or out of repair as to be dangerous, unsafe, unsanitary, in violation of Village ordinances, or otherwise render the building unfit for human habitation are not timely removed or discontinued within the time specified in the written notice to correct from the Village Board or designee.
- (k) **Dangerous Tree Areas.** Any place in the Village where any trees or the tree's limbs located on private or public lands constitute a dangerous or unsafe condition and these dangerous or unsafe conditions per Title 6, Chapter 4 of the Village of Elk Mound Code of Ordinances have not been timely removed within the time specified in the written notice to remove from the Village Board or designee. Specific tree nuisances include, but are not limited to:
 - (1) Any dead or dying tree, shrub, or other plant, whether located on Village-owned property or on private property.
 - (2) Any otherwise-healthy tree, shrub, or plant, whether located on Village-owned property or on private property which harbors insects or diseases which reasonably can be expected to injure or harm any tree, shrub or plant.
 - (3) Any tree, shrub or other plant or portion thereof, whether located on Village-owned property or private property, which by reason of location or condition constitutes an imminent danger to the health, safety or welfare of the general public.
 - (4) Any tree, shrub, or other plant or portion thereof, whether located on Village-owned property or on private property which obstructs the free passage of pedestrian or vehicular traffic or which obstructs a street light.

- (5) Any tree, shrub, or other plant or portion thereof, whether located on Village-owned property or on private property which dangerously obstructs the view in a "visibility triangle" or "vision clearance triangle."
- (l) **Fire Hazard Areas.** Any place in the Village where combustible materials are improperly located and stored on private or public lands and the materials are not timely removed or safely stored within the time specified in the written notice from the Village Board, Fire Inspector or designee.
- (m) **Improper Encroachment or Discharge Areas.** Any unauthorized or improper encroachments and discharges, including solid waste, trees, limbs, vehicles, structures, equipment, signs, recreational equipment, landscaping rocks and features, fences, hedges, driveway standards, manure, weeds, crops, and other materials on any Village roadway or on other Village public lands without written permission from the Village Board, and the improper or unauthorized encroachment or discharge is not timely removed or discontinued within the time specified in the written notice to remove from the Village Board or designee.
- (n) **Junked or Inoperable Vehicles, Refuse and Appliances.** Junked, unlicensed, disassembled or inoperable vehicles, refuse and appliances stored outside, in violation of this Chapter or Section 10-5-8, are public nuisances under this Section.
- (o) **Discharge or Storage of Hazardous or Nauseous Materials.** The discharge, disposal, storage or treatment of noxious, filthy, decaying, hazardous, or nauseous materials repulsive to the senses of ordinary persons and which continue to the substantial annoyance or substantial discomfort of persons or cause injury to persons or property in the Village of Elk Mound.
- (p) **Water Pollution.** Water pollution entering the surface waters causing a private or public drinking water well on another property or any river, stream, lake, ditch, canal or other body of water to become contaminated.
- (q) **Unhealthy Stagnant Waters.** All stagnant water in which mosquitoes, flies or other insects can multiply.
- (r) **Animals at Large.** All animals running at large or otherwise in violation of any provision in Title 7, Chapter 1 of the Village of Elk Mound Code of Ordinances.
- (s) **Abandoned Wells.** All abandoned wells not securely covered or secured from public use.
- (t) **Improperly Removed Snow/Ice.** All snow and/or ice not removed from public sidewalks within twenty-four (24) hours after it has ceased to fall or accumulate thereon in violation of Section 6-2-8.

Sec. 11-6-4 Public Nuisances Offending Morals and Decency.

No person shall create, continue, erect, maintain, cause, continue, install, construct, or permit to exist in the Village of Elk Mound a public nuisance associated with, causing or likely to cause danger, disturbance, or injury to public morals or decency. The following acts, uses, activities,

things, occupations, places, or physical conditions, not properly and timely removed by the owner or occupant of the land, after written notice to remove from the Village Board or designee to the owner or occupant of the land where the public nuisance occurs or to any person responsible for the creation, maintenance, or permitting of such nuisance in the Village of Elk Mound, are specifically declared to be a public nuisance:

- (a) **Improper Establishments.** Pursuant to Sec. 823.09, Wis. Stats., whoever shall erect, establish, continue, maintain, use, occupy, or lease any building or part of building, erection or place to be used for the purpose of lewdness, assignation or prostitution, or permit the same to be used, in the State of Wisconsin, shall be guilty of a nuisance and the building, erection, or place, in or upon which such lewdness, assignation or prostitution is conducted, permitted, carried on, continued or exists, and the furniture, fixtures, musical instrument and contents used therewith for the same purpose are declared a nuisance, and shall be enjoined and abated.
- (b) **Illegal Drug Houses.** Pursuant to Sec. 823.113(1), Wis. Stats., any building or structure that is used to facilitate the delivery, distribution or manufacture, as defined in Sec. 961.01(6), (9) and (13), Wis. Stats., respectively of a controlled substance, as defined in Sec. 961.01(4), Wis. Stats., or a controlled substance analog, as defined in Sec. 961.01(4m), Wis. Stats., and any building or structure where those acts take place, is a public nuisance and may be proceeded against under Sec. 823.113, Wis. Stats.
- (c) **Criminal Gang Houses.** Pursuant to Sec. 823.113(1), Wis. Stats., any building or structure that is used as a meeting place of a criminal gang, as defined in Sec. 939.22(9), Wis. Stats., or that is used to facilitate the activities of a criminal gang, is a public nuisance and may be proceeded against under Sec. 823.113, Wis. Stats.
- (d) **Illegal Alcohol Houses.** Pursuant to Sec. 125.14(5), Wis. Stats., any building or place where alcohol beverages or alcohol is sold, possessed, stored, brewed, bottled, manufactured or rectified without a valid permit or license issued under this Chapter or Ch. 139, Wis. Stats., or where persons are permitted to drink alcohol beverages in violation of Ch. 125, Wis. Stats., is a public nuisance and may be closed until the activity in violation of Ch. 125, Wis. Stats., is abated. When the activity is abated, the building or place may be used for any lawful purpose.
- (e) **Continuous Violation of Village Ordinances.** Any place or premises within the Village of Elk Mound where Village ordinances or state laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.

Sec. 11-6-5 Public Nuisances Affecting Peace and Safety.

No person shall create, contrive, erect, maintain, cause, continue, install, construct, or permit to exist in the Village of Elk Mound a public nuisance associated with, causing or likely to cause, potential danger, disturbance or injury to the public peace and order. The following acts, uses,

activities, things, occupations, places, or physical conditions, not properly and timely removed, after written notice to remove from the Village Board or designee to the owner or occupant of the land where the public nuisance occurred or is maintained or to any person responsible for the creation, maintenance, or permitting of such nuisance in the Village, are specifically declared to be a public nuisance, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the provisions of Section 11-6-2:

- (a) **Loud Noise Areas.** Any place in the Village where any unreasonably loud, discordant and unnecessary sound conditions, including sounds from non-farm animals or from any human created or aided sounds, including alleged music, is located on private or public land, without written approval of the Village Board or its designee and is not timely removed or discontinued within the time specified in the notice to remove from the Village Board or designee.
- (b) **Disorderly Conduct Area.** Any place in the Village where unpermitted, abusive, indecent, profane, or boisterous sounds, unpermitted fighting, brawling, or rioting or other unpermitted disorderly conduct conditions are located or occur on private or public lands and these disorderly conditions have not been timely removed or discontinued within the time specified in the written notice to remove from the Village Board or designee.
- (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 traffic 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) **Open Excavations.** All open and unguarded pits, wells, excavations or unused basements accessible from any public street, alley or sidewalk.
- (f) **Abandoned Refrigerators.** All abandoned refrigerators or freezers from which the doors and other covers have not been removed or which are not equipped with a device for opening from the inside.
- (g) **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.
- (h) **Dangerous Trees.** All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.
- (i) **Dilapidated Buildings.** All buildings or structures that are in violation of Village ordinances and so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.
- (j) **Repeated Ordinance Violations.** Repeated or continuous violations of police power ordinances of the Village are declared to be a public nuisance.

Sec. 11-6-6 Public Nuisances Regarding Motor Vehicles, Junk, Recreational Equipment or Firewood.

(a) **Accumulation of Junk Regulated.**

(1) **Junk Accumulation a Public Nuisance.** Any junk stored contrary to Subsection (a)(3) below and/or Section 10-5-8 is a public nuisance.

(2) **Definition.** The following words, phrases, and terms used in this Section shall be interpreted as follows:

a. **Junk.** Worn out or discarded materials including, but not limited to, the following: trash, debris, lumber, inoperable recreational vehicles and boats, household appliances, machinery and equipment, motor vehicles, tools, or parts of any of the above, discarded building materials, rags, newspapers or magazines, iron, copper, zinc, tin or other metallic items, plastic or glass containers or bottles, miscellaneous paper products, bags and other types of packaging materials and, in general, any item that has been discarded or has outlived its usefulness for the purpose for which it was originally intended.

b. **Salvage.** Something extracted from solid waste that is valuable or has a use, whether or not the use that it has is the same use as it had before it became solid waste.

(3) **Storage of Junk Prohibited.** No person, except a junk or salvage dealer, licensed by the Village Board and properly zoned, shall accumulate, store, or allow any junk or salvage outside of any building on any public or private real estate located within the Village of Elk Mound limits.

(4) **Issuance of Citation; Action to Abate.** Whenever the Police Department shall find any such junk as defined above, accumulated, stored, or remaining in the open upon any property within the Village limits contrary to the provisions of Subsection (a)(3) above, the Police Department shall notify the owner of said property on which such junk is located of the violation of this Section. If such junk is not removed within ten (10) days, the Police Department shall cause a citation to be issued to the property owner or occupant of the property upon which such junk is located. In addition, action to abate such nuisance may be commenced as provided by the Chapter or in Section 10-5-8.

(5) **Inspection Warrant.** Should permission to enter property for the purpose of determining whether or not a nuisance exists not be provided by the owner or occupant, a special inspection warrant under Sec. 6.0119, Wis. Stats., shall be required from the Circuit Court for that purpose.

(b) **Storage of Firewood Regulated.** Violation of Section 13-1-201 shall be considered to be a public nuisance.

Sec. 11-6-7 Abatement of Public Nuisances.

(a) **Nuisances Prohibited.**

- (1) ***Nuisances Not To Be Maintained.*** No person may maintain or permit a public nuisance within the Village of Elk Mound.
- (2) ***Criteria.*** The Village Board determines that a nuisance is unreasonable activity or use of property that interferes substantially with the comfortable enjoyment of life, health, or safety of another or others. Criteria for a public nuisance are, but not limited to, those grounds listed in Sec. 11-6-2 and as follows:
 - a. The number of people affected;
 - b. The location of the operation or property;
 - c. The degree or character of the injury inflicted or the right impinged upon;
 - d. The reasonableness of the use of the property;
 - e. The nature of the business maintained;
 - f. The proximity of dwellings to the business; and
 - g. The nature of the surrounding or community.
- (3) ***Repeated Offenses.*** Repeated violations of a Village ordinance or regulation constitutes a public nuisance as a matter of law.

(b) **Enforcement.** It shall be the duty of the Village President, Village Board, Police Department, Building Inspector, Fire Inspector, and/or Zoning Administrator to enforce the provisions of this Chapter, and they shall make periodic inspections and inspections upon complaint to ensure that such provisions are not violated. No action shall be take under this Section to abate a public nuisance unless the officer(s) shall have inspected or caused to be inspected the premises where the nuisance is alleged to exist and has or have satisfied himself/herself that a nuisance does in fact exist.

(c) **Summary Abatement.**

- (1) ***Order; Notice.***
 - a. If the enforcement official of the Village determines that a public nuisance exists within the Village and that there is imminent danger to public health, safety, peace, morals, comfort or welfare, the enforcement official, or his/her designee, may, without notice or hearing, issue an order reciting the existence of a public nuisance constituting an imminent danger to the public and requiring that prompt action be taken as such official deems necessary to abate the nuisance. Notwithstanding any other provisions of this Chapter, the order shall be effective immediately.
 - b. Notice of the order shall be personally served, or delivered by certified mail, by the enforcement official or his/her deputy on the owner and/or occupant of the premises where such nuisance is caused, maintained or permitted; a copy of such notice shall also be posted on the premises. Such order shall direct the person causing, maintaining or permitting such nuisance, or the owner and/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 Village will cause the same to be abated and will charge the cost thereof to the owner, occupant and/or person causing, maintaining or permitting the nuisance, as the case may be. Any person to whom such order is directed shall comply with the order immediately.

- (2) **Abatement by Village.** Whenever the owner or occupant shall refuse or neglect to remove or abate the condition described in the order, or if the nuisance is not abated within the time period provided, or if the owner, occupant or person causing or maintaining the nuisance cannot be found, the Village official having the duty of enforcement shall cause the abatement or removal of such public nuisance. The Village shall recover the expenses incurred thereby from the owner and/or occupant of the premises or from the person(s) who has caused or permitted the nuisance.
- (d) **Non-summary Abatement.**
- (1) **Order; Notice.** If the enforcing official determines that a public nuisance exists on private premises but that the nature of such nuisance is not such as to threaten imminent danger to the public health, safety, peace, comfort, morals or welfare, the enforcing official shall issue an order reciting the existence of a public nuisance and requiring the owner and/or occupant of the premises to remove or abate the condition described in the order within the time period specified therein. The order shall be personally served on the owner of the property, as well as the occupant if different from the owner and applicable to the nuisances cited, or, at the option of the enforcing official, the notice may be mailed to the last known address of the person to be served by certified mail with return receipt. If the owner or the occupant cannot be served, the order may be served by posting it on the main entrance of the premises and by publishing as a Class 3 notice under Ch. 985, Wis. Stats. The time limit specified in the order runs from the date of service or publication.
 - (2) **Abatement by Village.** If the owner or occupant fails or refuses to comply within the time period described, the enforcement official may cause the nuisance to be removed or abated and the Village shall recover the expenses incurred thereby from the owner and/or occupant of the premises or from the person who has caused or permitted the nuisance.
- (e) **Appeals.** Any person aggrieved by a notice/order of a Village enforcement official under Subsections (b) or (c) above issued in connection with any alleged violation of the provisions of this Chapter or of any applicable rules and/or regulations pursuant thereto or by any order requiring repair or demolition may file with the Village Clerk-Treasurer a petition setting forth his/her reasons for contesting the notice and/or order. Such petition shall be filed within fifteen (15) days of receipt of the enforcement official's notice. The Village Board shall conduct a hearing on the petition within thirty (30) days after the filing date of the appeal and make a determination on the appeal and the enforcement official's notice and/or order.

- (f) **Alternative Method — Other Village Ordinances.** As an alternative curative method, public nuisances may be abated under other Village ordinances, including, but not limited to: Section 8-1-2 "Public Safety and Health Hazards/Nuisances Regulated", Section 8-1-8 "Unhealthy, Hazardous or Unsightly Materials on Public or Private Property", Section 8-1-9 "Rodent Control", Section 8-1-14 "Burial of Animal Carcasses", Title 8, Chapter 3 "Recycling", Section 10-5-8 "Junked Vehicles and Appliances on Private Property", Section 11-3-2 "Littering Prohibited", Title 15, Chapter 1 "Building Code", and/or Title 15, Chapter 4 "Property Maintenance Code".
- (g) **Alternative Curative Method – by Court Action – Repair or Razing Order.**
- (1) **Court Petition.** As an alternative curative method, whenever an owner, operator, or agent of a premise or unit thereof fails, neglects, or refuses to make repairs, raze or remove, make safe by repairs or other corrective action called for, the enforcement official may undertake such repairs or action. If the owner, operator or agent fails to repair or remove a building which is dilapidated or blighted to the extent that such building, dwelling, or structure offends the aesthetic character of the immediate neighborhood or produces blight or deterioration by reason of such conditions, the enforcement official may apply to circuit court for an order determining that such building, dwelling, or structure constitutes a public nuisance and the defect shall be remedied. Every violation of this Code of Ordinances may constitute a public nuisance and may be enjoined and the maintenance thereof may be abated by legal action by the Village or citizen thereof.
- (2) **Razing Orders.** Where a judicial review of a decision of the enforcement official is sought when such order originates under Section 66.0413, Wis. Stats., governing the razing of buildings, the statutory procedures shall be adhered to.
- (h) **Alternative Curative Method – Ch. 823, Wis. Stats., Nuisances.** The provisions of Chapter 823, Wis. Stats., regarding public nuisances specifically addressed by that Chapter are adopted and incorporated herein by reference. At his/her option, if the enforcement official finds that a public nuisance exists, such official may file a written report of such findings with the Village Board, which shall cause an action to abate such nuisance to be commenced in the name of the Village in Circuit Court in accordance with the provisions of Chapter 823, Wis. Stats. Nothing in this Chapter shall be construed as prohibiting the abatement of public nuisances by the Village of Elk Mound and its officials in accordance with the laws of the State of Wisconsin.
- (i) **Enforcement – Agricultural Uses and Practices.** In actions pertaining to agricultural uses and agricultural practices, as defined in Secs. 823.08 and 91.01, Wis. Stats., the Village shall observe the limitations set forth in Sec. 823.08, Wis. Stats.
- (j) **Court Order to Access Property.** Except when necessary under Subsection (b), no enforcement official 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, or to permit inspection under Section 66.0119, Wis. Stats.

Sec. 11-6-8 Cost of Abatement.

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

Sec. 11-6-9 Enforcement; Penalty.

- (a) **Statutory Authority.** The Village Board of the Village of Elk Mound, pursuant to authority granted to local municipalities, hereby incorporates the provisions of Sec. 66.0413 and Ch. 823, Wis. Stats., as the same apply to the abatement of public nuisances.
- (b) **Inspection of Premises.** Whenever complaint is made to the Village Clerk-Treasurer that a public nuisance exists within the Village of Elk Mound, the Village Clerk-Treasurer shall promptly notify the appropriate inspection authority who shall forthwith inspect or cause to be inspected the premises and shall make a written report which shall be submitted to the Village Clerk-Treasurer. Whenever practicable, the inspecting officer shall cause photographs to be made of the premises and shall file the same in the office of the Village Clerk-Treasurer.
- (c) **Enforcement.** The Village President, Village Clerk-Treasurer, Village Board, Fire Inspector, Building Inspector, Zoning Administrator and law 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 ensure that such provisions are not violated. No action shall be taken under Section 11-6-6 to abate a public nuisance unless the officer 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.
- (d) **General Penalty.** Any person who shall violate any provision of this Chapter shall be subject to a penalty as provided in Section 1-1-6.

Sec. 11-6-10 Chronic Nuisance Premises.

- (a) **Findings and Purpose.**
 - (1) **Findings.** The Village Board of the Village of Elk Mound finds that certain premises receive within the Village receive and require more than the general, acceptable level of law enforcement, building inspection, nuisance abatement and public health

nuisance abatement services; this places an undue and inappropriate burden on Village of Elk Mound taxpayers and constitute public nuisances. Chronic nuisance activity contributes to the general decay of an affected neighborhood and negatively impacts law-abiding residents in these neighborhoods.

(2) **Purpose.**

- a. This Section is enacted to encourage owners, occupants and/or tenants of premises to recognize their responsibility to ensure that activities occurring on their premises conform to the law and do not unduly burden Village services. Therefore, the Village Board determines that the Village will charge owners of such premises with the cost associated with abating nuisance activity at premises where nuisance activities chronically occur.
- b. This Section does not affect a premises owner's duty to comply with Fair Housing ordinances nor does it affect a premises owner's duty to comply with all other laws governing residential tenancies.

(b) **Definitions.** The following definitions are applicable in this Section:

- (1) **Chronic Nuisance Premises.** A premises that meets any of the following criteria:
 - a. Is a premises which has generated three (3) or more calls for police services that have resulted in an enforcement action for nuisance activities on three (3) separate days within a one hundred twenty (120) day period and/or has generated three (3) or more cases involving the Building Inspector, Zoning Administrator, Weed Commissioner or other property maintenance or health officials from at least three (3) or more inspections within a one (1) year period, with such calls resulting in an enforcement action. Three (3) or more calls for police services resulting in an enforcement action for nuisance activities includes enforcement action taken against any person associated with the premises while at or within two hundred (200) feet of the premises for a nuisance activity; or
 - b. Is a premises for which charges have been filed by the District Attorney for prosecution for the manufacture, distribution or delivery of a controlled substance that has occurred on or in association with the premises; or
 - c. Is a premises which has had one (1) enforcement action associated with the premises resulting from the manufacture, delivery or distribution of a controlled substance(s) as defined in Chapter 961, Wis. Stats.
- (2) **Chronic Nuisance Premises Notice.** The notice issued by the Police Department, Building Inspector, Weed Commissioner, Zoning Administrator or public health officials.
- (3) **Enforcement Action.** Means any of the following: The issuance of a citation for a violation and/or the filing of charges by the District Attorney or the Village Attorney for prosecution of nuisance activities, and/or referral of charges by the Building Inspector, Police Department, Weed Commissioner, Zoning Administrator or public

health officials to the Village Attorney or District Attorney for prosecution for nuisance activities.

- (4) **Nuisance Activities.** Any of the following activities, behaviors or conduct whenever engaged in by the premise's owners, occupants, operators, tenants, or persons associated with a premises:
- a. An act of harassment as defined in Section 11-2-13, or Sec. 947.013, Wis. Stats..
 - b. Disorderly conduct as defined in Section 11-2-8, or Sec. 947.01, Wis. Stats.
 - c. Battery, substantial battery or aggravated battery as defined in Sec.940.19, Wis. Stats.
 - d. Crimes of violence as defined in Ch. 940, Wis. Stats.
 - e. Resisting or obstructing an officer as prohibited by Sections 11-2-10 or 11-2-16, or Sec. 946.41, Wis. Stats.
 - f. Indecent exposure as prohibited by Section 11-1-1 or Sec. 944.20(1)(b), Wis. Stats.
 - g. Damage to property as prohibited by Sections 11-3-1 or 11-3-5, or Sec. 943.01, Wis. Stats.
 - h. The production or creation of noises disturbing the peace, as prohibited by Section 11-2-7.
 - i. Illegal discharge of a firearm or weapon as prohibited by Section 11-2-1.
 - j. Crimes involving illegal possession of firearms as defined in Secs. 941.23, 941.26, 941.28, 941.29 and 948.60, Wis. Stats.
 - k. Unlawful trespass to land or premises as regulated by Section 11-3-8, trespass to land as defined in Sec. 943.13, Wis. Stats., or criminal trespass to a dwelling as defined in Sec. 943.14, Wis. Stats.
 - l. Obstructing a street or sidewalk as prohibited by Section 11-2-5.
 - m. Theft as defined in Sec. 943.20, Wis. Stats.
 - n. Arson as defined in Sec. 943.02, Wis. Stats.
 - o. Prostitution as prohibited by Sec. 944.33, Wis. Stats.
 - p. Soliciting prostitutes as prohibited by Sec. 944.32, Wis. Stats.
 - q. Pandering as prohibited by Sec. 944.33, Wis. Stats.
 - r. Possessing an open container which contains alcohol beverages or consuming alcohol beverages upon any public street as prohibited by Section 11-4-1.
 - s. Selling, offering for sale or giving away of any intoxicating liquors or fermented malt beverages without a license as provided by Sec. 125.04(1), Wis. Stats., or Title 7, Chapter 2 "Fermented Malt Beverages and Intoxicating Liquor".
 - t. Possession, manufacture, distribution or delivery of a controlled substance or related offense as defined in Ch. 961, Wis. Stats.
 - u. Maintaining a drug dwelling as defined in Sec. 961.42, Wis. Stats.
 - v. Illegal gambling as defined in Sec. 945.02, Wis. Stats.
 - w. Improperly keeping, owning or harboring a dangerous animal or an animal disturbing the peace as defined in Title 7, Chapter 1 "Licensing of Dogs; Regulation of Animals".

- x. Violations of property maintenance, refuse storage and housing standards contained in Section 8-1-2 "Public Safety and Health Hazards/Nuisances Regulated", Section 8-1-8 "Unhealthy, Hazardous or Unsightly Materials on Public or Private Property", Section 8-1-9 "Rodent Control", Section 8-1-14 "Burial of Animal Carcasses", Title 8, Chapter 3 "Recycling", Section 10-5-8 "Junked Vehicles and Appliances on Private Property", Section 11-3-2 "Littering Prohibited", Title 11, Chapter 6 "Public Nuisances", Title 15, Chapter 1 "Building Code", and/or Title 15, Chapter 4 "Property Maintenance Code".
 - (5) **Person.** Any natural person, agent, association, firm, partnership, corporation, limited liability corporation, or other entity capable of owning, occupying or using property in the Village of Elk Mound.
 - (6) **Person Associated With.** Any person who, whenever engaged in a nuisance activity, has entered, patronized, visited or attempted to enter, patronize or visit, or waited to enter, patronize or visit a premises or person present on a premises, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a property, person in charge, or owner of a premises.
 - (7) **Person in Charge.** Any person, in actual or constructive possession of a premises including, but not limited to, an owner or occupant of premises under his or her ownership or control.
 - (8) **Premises.** A place of abode, a residence, a house or multiple-family dwelling unit for one (1) or more persons, including lodging houses, hotels, motels and tourist rooming houses, and associated common areas, yards and parking lots. In the case of multiple dwelling units, "premises", as used in this Section, may consist of any single unit providing complete, independent living facilities for one (1) or more persons, including provisions for living, sleeping, eating, cooking and sanitation.
- (c) **Procedures.**
- (1) **Determination.**
 - a. Upon a finding that a premises meets the definition of a chronic nuisance premises, the Chief of Police, Zoning Administrator or Building Inspector may declare a premises a chronic nuisance premises. The Chief of Police, Zoning Administrator or Building Inspector shall provide written notice of his/her determination to the premises owner identified in the Village Assessor's records for that premises.
 - b. The Chronic Nuisance Premises Notice shall be deemed delivered if sent by either first class mail to the premises' owner's last known address or delivered in person to the premises owner.
 - c. If the premises owner cannot be located, the Notice shall be deemed to be properly delivered if a copy of it is left at the premises owner's usual place of abode in the presence of a competent member of the family at least fourteen (14) years of age, or a competent adult currently residing there and who shall be informed of the contents of the Notice.

- d. If a current address cannot be located, it shall be deemed sufficient if a copy of the Chronic Nuisance Premises Notice is sent by first class mail to the last known address of the owner as identified by the records of the Village Assessor.
- (2) **Contents of Notice.** The Chronic Nuisance Premises Notice shall contain the following information:
- a. Street address, parcel number or a legal description sufficient to identify the premises.
 - b. A concise statement, including a description of the relevant activities supporting the determination that the premises is a chronic nuisance premises.
 - c. A statement that the owner shall immediately notify the Chief of Police, Zoning Administrator or Building Inspector of any change in address to ensure receipt of future notices.
 - d. A statement that the cost of future enforcement may be assessed as a special charge against the premises.
 - e. A statement by the owner, occupant, operator or tenant of the premises shall, within thirty (30) days of receipt of the Chronic Nuisance Premises Notice, respond to the Chief of Police, Zoning Administrator and/or Building Inspector either with an appeal or to propose a written course of action to abate the nuisance activities. Such statement shall direct the premises owner to schedule a meeting with the Chief of Police, Zoning Administrator and/or Building Inspector to discuss the nuisance activity and the premises owner's intent regarding abatement.
 - f. A statement that the premises owner shall, when appropriate, consider and implement alternatives to eviction when formulating an abatement plan.
- (3) **Domestic Abuse Considerations.** Section 968.075, Wis. Stats., broadly defines "domestic abuse". Therefore, in reaching a determination that a premises is a chronic nuisance premises, activities that are "domestic abuse" incidents pursuant to Sec. 968.075, Wis. Stats., shall not be included as nuisance activities unless the incidents have been reviewed by the Chief of Police and the Village Attorney and a determination is made that, based upon the specific facts of each incident, the activities should be considered nuisance activities as defined herein. In determining whether to include such activities, the Chief of Police and the Village Attorney shall consider the strong public policy in favor of domestic victims reporting alleged abuses, and this Section shall not operate to discourage such reports.
- (4) **Owner Response to Chronic Nuisance Premises Notice.**
- a. If the owner responds to the chronic nuisance premises notice pursuant to Subsection (c)(2) above with a nuisance abatement proposal, the Chief of Police, Zoning Administrator and/or Building Inspector may accept, reject or work with the owner to modify the proposal. The proposed plan may be acceptable if it can reasonably be expected to result in abatement of the nuisance activities described in the Notice within sixty (60) days.

- b. If the premises owner meets with the Chief of Police, Zoning Administrator and/or Building Inspector and presents an acceptable abatement plan and initiates action to abate the nuisance activities occurring on the premise, the Police Department, Zoning Administrator and/or Building Inspector may delay further enforcement of this Section, including cost recovery.
 - c. If the premises owner ceases to cooperate with the efforts to abate the nuisance activities, the Chief of Police, Zoning Administrator and Building Inspector will reinstitute enforcement of this Section, and the premises owner will be sent a Change in Status Letter. This Change in Status Letter will document the Police Department's, Zoning Administrator's and/or Building Inspector's efforts to contact and/or obtain cooperation of the owner.
 - d. Failure by the premises owner to respond to the Change in Status Letter within ten (10) days as directed in this Subsection shall result in a forfeiture of One Thousand Dollars (\$1,000.00), plus court costs and fees.
- (5) **Determination.**
- a. Whenever the Chief of Police, Zoning Administrator and/or Building Inspector determines that any of the following have occurred, the procedures under Subsection (c)(5)b below shall be followed:
 - 1. A premises owner has failed to respond to the Chronic Nuisance Premises Notice; or
 - 2. Enforcement action for an additional nuisance activity has occurred at a premises for which Notice has been issued pursuant to Subsection (c)(2) and this enforcement action has occurred not less than fifteen (15) days after the Chronic Nuisance Premises Notice has been issued; or
 - 3. A course of action submitted pursuant to Subsection (c)(4) has not been completed.
 - b. Pursuant to Subsection (c)(5)a above, the Chief of Police, Zoning Administrator and/or Building Inspector may calculate the cost of enforcement to abate this and any subsequent nuisance activities and may refer such cost to the Village Administrator so that the cost may be billed to the premises owner. The Chief of Police, Zoning Administrator and/or Building Inspector shall notify the premises owner of the decision to refer the cost of enforcement to the Village Clerk-Treasurer. Delivery of this notice, along with a copy of the Chief of Police's, Zoning Administrator's and/or Building Inspector's referral letter to the Village Clerk-Treasurer, shall be made as set forth in Subsection (c)(2). The Notice shall contain:
 - 1. The street address or legal description sufficient for identification of the premises.
 - 2. A statement that the Chief of Police and/or Building Inspector has referred the cost of enforcement to the Village Clerk-Treasurer with a concise description of the nuisance activities and the relevant sections of the Village of Elk Mound Code of Ordinances.
 - 3. Notice of the premises owner's right to appeal pursuant to Subsection (c)(7) below.

- c. Each subsequent incident of enforcement action for nuisance activity shall be deemed a separate violation and costs will continue to be assessed pursuant to this Section until the nuisance is abated.
- (d) **Penalties and Remedies.**
- (1) **Cost Recovery.**
- a. The Chief of Police, Zoning Administrator and/or Building Inspector shall keep an accurate account of the cost of enforcement and shall report it to the Village Clerk-Treasurer. The Village Clerk-Treasurer shall establish a reasonable charge for the costs of enforcement of this Section.
- b. Upon receipt of a Notice from the Chief of Police, Zoning Administrator and/or Building Inspector issued pursuant to Subsection (c)(2) above, the Village Clerk-Treasurer shall charge any premises owner found to be in violation of this Section the costs of enforcement in full or in part. Such costs shall be billed to the premises owner by invoice sent by first class mail and shall be paid within thirty (30) days of the date on the invoice.
- c. Any unpaid invoice shall be a lien on such premises and may be assessed and collected as a special charge pursuant to Sec. 66.0627, Wis. Stats. A One Hundred Dollar (\$100.00) administrative fee shall be added to the cost of enforcement charged to the benefited premises any time the premises is declared a chronic nuisance premises.
- (2) **Suspension of Cost Recovery.** If after receipt of a billing notice from the Village the premises owner develops an acceptable plan and initiates action to abate nuisance activities occurring on the premises, the Chief of Police, Zoning Administrator and/or Building Inspector will suspend further enforcement of this Section. The premises owner is still responsible for any enforcement costs incurred prior to the premises owner submitting an abatement plan, including the administrative fee. If the premises owner ceases to cooperate with the efforts to abate the nuisance activities, the Chief of Police, Zoning Administrator and/or Building Inspector will reinstitute enforcement of this Section after sending the premises owner a Change in Status letter.
- (3) **Forfeiture.** A forfeiture action may be commenced by the Village Attorney for each enforcement action for nuisance activity occurring after the premises has been declared a chronic nuisance premises. The forfeiture shall be not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) for each enforcement action. Upon default of payment, the premises owner may be imprisoned in the county jail for a period of not more than ninety (90) days.
- (4) **Appeal.** Appeal of a determination of the Chief of Police, Zoning Administrator and/or Building Inspector pursuant to either Subsection (c)(1), or the action of the Village Clerk-Treasurer imposing special charges pursuant to Subsection (d)(1) against the premises, may be submitted in writing to the Zoning Board of Appeals in accordance with the procedures under Section 13-1-260 through 13-1-264.
- (e) **Eviction or Retaliation Prohibited.** It shall be unlawful for a landlord to terminate the lease agreement or periodic tenancy of any tenant or otherwise retaliate against any tenant or members of the tenant's household because that tenant complained or was complained

about to the Police Department, Zoning Administrator or Building Inspector about nuisance activities on the landlord's premises. It shall be unlawful for a landlord or any person acting as an agent for the landlord to intimidate or actively discourage a tenant and/or persons associated with a tenant, from calling the Police Department or other Village officials to report nuisance activity associated with a premises. It shall be presumed that any attempt to increase charges, reduce services, or to otherwise harass or retaliate against the tenant during the twelve (12) month period following receipt of the complaint by the Chief of Police, Zoning Administrator and/or Building Inspector constitutes unlawful retaliation under this Subsection. Such presumption may be rebutted by the preponderance of evidence that the actions by the landlord were based upon good cause. Notwithstanding the foregoing, a tenant's lease agreement or periodic tenancy may be terminated for a failure to pay rent; committing nuisance activity; for the commission of waste upon the premises; violating the terms and conditions of the lease agreement or periodic tenancy or as otherwise provided in Chapter 704, Wis. Stats., and AG 134, Wis. Adm. Code. "Good cause" as used in this Subsection means that a landlord must show good cause for his/her actions, other than one related to or caused by the operation of this Section.

- (f) **Summary Abatement.** The Building Inspector, Zoning Administrator and/or Chief of Police are authorized to cause the abatement, including summary abatement, of any nuisance found on any premises, according to the procedure prescribed in Section 11-6-7. This Section may also be enforced by injunction. Nothing in this Section shall be construed as prohibiting the abatement of public nuisances by the Village in accordance with this Code of Ordinances and state law.
- (g) **When Chronic Nuisance is Deemed Abated.** The public nuisance created by a chronic nuisance premises shall be deemed abated when no enforcement action to address nuisance activities occurs for a period of six (6) consecutive months from the date stated on the Notice declaring the premise a chronic nuisance premise and/or there are no building inspection cases generated for a period of six (6) consecutive months from the date stated on the notice declaring the premise a chronic nuisance premise.

Title 11 ► Chapter 7

Regulation of Lewd and Sexually Explicit Conduct

Article A Introduction

- 11-7-1 In General
- 11-7-2 Definitions
- 11-7-3 Public Indecency Prohibited
- 11-7-4 Exposing Minors to Harmful Materials
- 11-7-5 through
11-7-19 Reserved for Future Use

Article B Entertainment Featuring Live Sexually Explicit Performances

- 11-7-20 Prohibitions Applicable to Premises Holding Alcohol Beverage Licenses
- 11-7-21 Sexually Explicit Live Adult Entertainment
- 11-7-22 Annual Adult Entertainment License
- 11-7-23 Renewals
- 11-7-24 Regulations
- 11-7-25 Location
- 11-7-26 Penalty
- 11-7-27 License Suspension, Revocation or Non-Renewal
- 11-7-28 License Transfer
- 11-7-29 through
11-7-39 Reserved for Future Use

Article C Adult Oriented Establishments

- 11-7-40 Intent of Article
- 11-7-41 Adult Oriented Establishment License Required
- 11-7-42 Application for License

11-7-43	Standards for Issuance of a License
11-7-44	License Fee
11-7-45	Display of License or Permit
11-7-46	Renewal of License or Permit
11-7-47	Denial of Application
11-7-48	Transfer of License
11-7-49	Physical Layouts of Adult Oriented Establishments
11-7-50	Responsibilities of Operators
11-7-51	Registration of Employees
11-7-52	Exclusions
11-7-53	Penalty
11-7-54	License Suspension, Revocation or Non-Renewal of Licenses

Article A: Introduction

Sec. 11-7-1 In General.

- (a) It is a lawful purpose of the Village Board 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 Village of Elk Mound. 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; Boston, 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 Village of Elk Mound.
- (b) The Village Board finds that there is an increasing likelihood of commercial exploitation of human sexuality by owners of premises holding "Class B" alcohol beverage licenses in the State of Wisconsin. Such exploitation takes place in the form of employing or permitting persons to perform or exhibit their nude or semi-nude bodies to other persons as an inducement to other persons to purchase alcohol beverages. The direct result of such exploitation is 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 in the Village of Elk Mound.

Sec. 11-7-2 Definitions.

The following definitions are applicable in this Chapter:

- (a) **Adult Bath House.** An establishment or business which provides the service of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a licensed medical practitioner or a professional physical therapist licensed by the State of

11-7-2

Wisconsin and which establishment provides to its patrons an opportunity for engaging in specified sexual activities as defined in this Article.

- (b) **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.
- (c) **Adult Bookstore.** 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.
- (d) **Adult Cabaret.** A cabaret which features male or female impersonators or similar entertainers.
- (e) **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.
- (f) **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.
- (g) **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.
- (h) **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.
- (i) **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.
- (j) **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.
- (k) **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.
- (l) **Adult Oriented Establishment.** An establishment which includes, but is not limited to, adult bookstores, adult motion picture theaters, adult mini-motion theaters, adult bath houses, adult body painting studios, adult motels, adult novelty shops or adult cabarets, 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.
- (m) **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.

11-7-2

- (n) **Church.** A building whether situated within the Village 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.
- (o) **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.
- (p) **Community.** The State of Wisconsin.
- (q) **Day Care Center.** A facility licensed by the State of Wisconsin pursuant to Sec. 48.65, Wis. Stats., whether situated within the Village of Elk Mound or not.
- (r) **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.
- (s) **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.
- (t) **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.
- (u) **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 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.
- (v) **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.
- (w) **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.

- (x) **Manager.** The operator or agent licensed under this Chapter who shall not be licensed as a massage technician.
- (y) **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.
- (z) **Massage Establishment.** A place of business wherein private massage is practiced, used or made available as a principal use of the premises.
- (aa) **Massage Room.** The area where private massage is performed.
- (bb) **Massage Technician.** A person who practices, administers or uses massage for a consideration, and who holds a valid license under this Chapter.
- (cc) **Minor.** Any person under the age of eighteen (18) years.
- (dd) **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.
- (ee) **Operator.** Any person operating, conducting, maintaining or owning any adult-oriented establishment or massage establishment.
- (ff) **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.
- (gg) **Residential.** Pertaining to the use of land, whether situated within the Village 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.
- (hh) **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.
- (ii) **School.** A building, whether situated within the Village 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).
- (jj) **Sexual Conduct.** The commission of any of the following: sexual intercourse, sodomy, bestiality, necrophilia, human excretion, masturbation, sadism, masochism, fellatio, cunnilingus or lewd exhibition of human genitals.

11-7-2

- (kk) **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.
- (ll) **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.
- (mm) **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.
- (nn) **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.
- (oo) **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 Village of Elk Mound municipal limits, knowingly or intentionally, in a public place, commits public indecency by doing one of the following:
 - (1) Engaging in specified sexual activities;
 - (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 Village Board 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, unless such minor is accompanied by his/her parent or legal guardian.

- (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 11-7-53.

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

Article B: Entertainment Featuring Live Sexually Explicit Performances

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 Village of Elk Mound 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 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 Village Clerk-Treasurer.

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

- (a) **Application.** Applications for an annual adult entertainment license shall be made to the Village Clerk-Treasurer. The Village Clerk-Treasurer shall notify the appropriate law enforcement authorities, Building Inspector, and Fire Inspector of the license application, publish a Class I notice of such application and have the license application submitted to the Village Board within thirty (30) days of application. Investigating officials shall submit written reports and recommendations to the Village Board. A public hearing shall be held on the application, preceded by a Class II notice. The Village Board may take any testimony regarding the granting or denial of such license.
- (b) **Action.** The Village Board shall either approve, modify or reject the application; the reasons for the action taken shall be specified in the written record of the Village Board.

11-7-22

- (c) **Probationary Period.** If license issuance is approved by a majority of the Village Board, an initial applicant shall be granted a probationary license by the Village Clerk-Treasurer. 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 Village Board, the Village Board 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 Village Clerk-Treasurer shall be responsible for, following Village Board 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 Village. 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 Village of Elk Mound.
- (g) **Number of Licenses Limited.** No more than one (1) annual adult entertainment license, issued under this Article, shall be issued to license holders within the Village of Elk Mound at one (1) time.

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. Such license may be renewed pursuant to the provisions of Section 11-7-22 as that Section applies to notice being given by the Village Clerk-Treasurer and provisions for publication and action by the Village Board.

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 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 Village 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 Village 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) An establishment licensed under this Chapter shall only be located in an area zoned Industrial. No establishment licensed under this Article shall permit any performance or entertainment governed by this Article to occur within one hundred (100) feet of any area zoned for 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, or within five hundred (500) feet of any business holding an alcohol beverage license.
- (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 Village Board, including the action of license revocation or non-renewal, anyone who violates any of the provisions of this Article shall forfeit not less than Two Hundred Fifty Dollars (\$250.00), but not more than One Thousand Dollars (\$1,000.00), for each and every offense, together with 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. 11-7-27 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 Village Board 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 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 Village Board except upon due notice and hearing to determine whether grounds for such action exist. Such hearing shall be held before the Village Board. 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 Village Board 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 Village Board shall prepare findings of fact and conclusions of law as to what, if any, action the Village Board will take with respect to the license. The Village Board 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 be transferable in accordance with the procedure set forth in Section 11-7-49.

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 Village of Elk Mound, 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 Village of Elk Mound without first obtaining a license to operate issued by the Village of Elk Mound.
- (b) A license may be issued only for one (1) adult oriented establishment located at a fixed and certain place per filed application. Any person, partnership, or corporation which desires to operate more than one (1) adult oriented establishment must have a license for each.
- (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.
- (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 Village Clerk-Treasurer. The application shall be filed in triplicate with and dated by the Village Clerk-Treasurer. A copy of the application shall be distributed within ten (10) days of receipt thereof to the Fire Inspector, Building Inspector, appropriate law enforcement authorities, 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 Village Clerk-Treasurer. 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;
 - (7) All criminal 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 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 11-7-44(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 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 11-7-43(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 11-7-43(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 11-7-43(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 law enforcement authorities have investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the Village Clerk-Treasurer no later than fourteen (14) days after the application.
 - (c) **Inspection.** The Building Inspector, Fire Inspector, and/or law enforcement authorities shall inspect the premises proposed to be licensed to verify compliance with their respective Codes, and shall report compliance findings to the Village Clerk-Treasurer within fourteen (14) 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.

11-7-43

- (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 year it 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 Village Clerk-Treasurer. 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 Village Clerk-Treasurer. A copy of the application for renewal shall be distributed by the Village Clerk-Treasurer to the Building Inspector, Fire Inspector, law enforcement authorities, and the applicant. The application for renewal shall be upon a form provided by the Village Clerk-Treasurer 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 authorities are aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the Village Clerk-Treasurer.

Sec. 11-7-47 Denial of Application.

- (a) Whenever an initial application is denied, the Village Clerk-Treasurer 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 Village Board.
- (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 Village Clerk-Treasurer.

Sec. 11-7-48 Transfer of License.

- (a) A license is personal to the owner(s) and operator designated in the application, provided it may be transferred pursuant to this Section. A transfer application must be filed no less than ten (10) days before any change of the owner(s) or operators designated on the application. In the event that a transfer application is not timely filed, then the license shall be invalid for any purpose relating to the operation of the adult oriented business, and any transfer shall require the filing of an original application and be subject to the regulations applicable thereto.
- (b) The Village Clerk-Treasurer shall prescribe a form on which license transfer applications shall be made. The form shall include a statement under oath that the original application remains correct as previously submitted in all respects except those that are amended by the transfer application. The transfer application shall contain a statement under oath that the individual signing the transfer application has personal knowledge of the information contained therein and that the information is true and correct and shall not be complete unless accompanied by a nonrefundable transfer fee of One Hundred Dollars (\$100.00). Transfer applications shall be filed in the same place and at the same time as original applications, and the fee shall be payable in the same manner as for original applications.
- (c) Transfer applications shall be reviewed, issued and subject to appeal in the same manner as original applications, and they shall be issued for the remaining term of the license to be transferred.
- (d) Any transfer of an adult oriented establishment, other than as provided in this Section, from the licensed premises to any other premises shall cause such license to lapse and become void. A license which has lapsed and become void shall be subject to revocation under Section 11-7-54.

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

11-7-49

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 reasonable 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 Village 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 Village 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) The Village shall charge its reasonable costs for supplying such posters, brochures, pamphlets and other information required under this Article.

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 Village Clerk-Treasurer. 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 Village 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 as prescribed in Section 1-3-1 shall be paid per registration, which shall be paid to the Village to cover costs of the identification card.

Sec. 11-7-52 Exclusions.

All private schools and public schools, as defined in Chapter 115, Wis. Stats., located within the Village of Elk Mound 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 Village Board, including the action of license revocation, suspension or non-renewal, anyone who violates any of the provisions of this Article shall forfeit not less than Two Hundred Fifty Dollars (\$250.00), but not more than One Thousand Dollars (\$1,000.00), for each and every offense, together with 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 Village Board 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 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 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 Village Clerk-Treasurer.
 - (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 Village Board except upon due notice and hearing to determine whether grounds for such action exist. Such hearing shall be held before the Village Board. 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 Village Board if such is required, on his or her own behalf under subpoena by the Village Board 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 Village Board shall prepare findings of fact and conclusions as to what, if any, action the Village Board will take with respect to the license. The Village Board shall provide the complainant and licensee with a copy of the report.