

## CHAPTER 13

### PUBLIC SAFETY/PUBLIC ORDER

#### **13.01 PUBLIC SAFETY/PUBLIC ORDER ORDINANCE**

(1) **GENERAL PROVISIONS.** No person shall commit the following offenses in the Village of New Auburn (herein noted as Village of New Auburn violations) that are hereby adopted by reference in this chapter. The prosecution of such offenses under this ordinance shall be as provided in Section 66.051, (1993-1994) Wisconsin Statutes, and the below-noted sections, but the penalties for violation of these sections shall be limited to forfeitures as provided in Sections 13.01(21).

**(A) Chapter 167, (1993-1994), Wisconsin Statutes:**

- (1) 167.31: Safe use and transportation of firearms and bows
- (2) 167.35: Refrigerators and iceboxes
- (3) 167.27: Capping and filling wells or similar structures

**(B) Chapter 941, (1993-1994), Wisconsin Statutes:**

- (1) 941.20: Endangering safety by use of dangerous weapon
- (2) 941.23: Carrying concealed weapon
- (3) 941.235: Carrying firearm in public building
- (4) 941.237: Carrying handgun where alcohol beverages may be sold or consumed
- (5) 941.29: Possession of a firearm
- (6) 941.295: Possession of an electric weapon

**(C) Chapter 942, (1993-1994), Wisconsin Statutes:**

- (1) 942.03: Giving false information for publication
- (2) 942.05: Opening Letters

**(D) Chapter 943, (1993-1994), Wisconsin Statutes:**

- (1) 943.01: Damage to property
- (2) 943.017: Graffiti
- (3) 943.11: Entry into locked vehicles
- (4) 943.14: Criminal trespass to dwellings
- (5) 943.15: Entry onto a construction site or into a locked building, dwelling, or room
- (6) 943.21: Fraud on hotel or restaurant keeper
- (7) 943.23: Operating a vehicle without owner's consent
- (8) 943.24: Issue of worthless check
- (9) 943.30: Threats to injure or accuse of crime

- (10) 943.31: Threats to communicate derogatory information
- (11) *blank*
- (12) 943.37: Alteration of property identification marks
- (13) 943.59: Retail theft
- (14) 943.61: Theft of library material
- (15) 943.13: Trespass to land

**(E) Chapter 945, (1993-1994), Wisconsin Statutes**

- (1) 945.02: Gambling
- (2) 945.05: Dealing in gambling devices
- (3) 945.07: Gambling by participants in contest
- (4) 945.08: Bribery of participant in contest
- (5) 945.09: Commercial printing
- (6) 945.12: Endless sales chains
- (7) 945.03 Commercial gambling

**(F) Chapter 946, (1993-1994), Wisconsin Statutes**

- (1) *blank*
- (2) 946.06: Improper use of the Flag
- (3) 946.10: Bribery of public officers and employees
- (4) 946.11: Special privileges from public utilities
- (5) 946.12: Misconduct in public office
- (6) 946.13: Private interest in public contract prohibited
- (7) 946.15: Public construction contracts at less than full rate
- (8) 946.17: Corrupt means to influence legislation, disclosure of interest
- (9) 946.31: Perjury
- (10) 946.32: False swearing
- (11) 946.40: Refusing to aid an officer
- (12) 946.41: Resisting or obstructing an officer
- (13) 946.65: Obstructing justice
- (14) 946.68: Simulating legal process
- (15) 946.69: Falsely assuming to act as public officer or employee or utility employee
- (16) 946.70: Impersonating Peace Officers
- (17) 946.72: Tampering with public records and notices
- (18) 946.71: Unlawful use of license for carrying concealed weapons

**(G) Chapter 947, (1993-1994), Wisconsin Statutes**

- (1) 947.01: Disorderly conduct
- (2) 947.012: Unlawful use of telephone
- (3) 947.013: Harassment
- (4) 947.015: Bomb scares

- (5) 947.02: Vagrancy
- (6) 947.04: Drinking in common carriers
- (7) *blank*
- (8) 947.06: Unlawful assemblies and their suppression
- (9) *blank*

**(H) Chapter 948, (1993-1994), Wisconsin Statutes**

- (1) 948.11: Exposing a child to harmful material or harmful descriptions or narrations
- (2) 948.21: Neglecting a child
- (3) 948.31: Interference with custody by parent or other
- (4) 948.60: Possession of a dangerous weapon by a person under 18
- (5) 948.63: Receiving property from a child
- (6) 948.61: Possessing dangerous weapons other than firearms on school premises
- (7) 948.605: Gun free school zones
- (8) 948.63: Receiving property from children
- (9) 948.45 Contributing to truancy
- (10) 948.70 Tattooing of children

**(I) Chapter 961, Wisconsin Statutes**

- (1) 961.41 Wis. Stats. Possession of Controlled Substances

**(2) DISORDERLY CONDUCT PROHIBITED.** No person shall within the Village of New Auburn:

**(A)** In any public or private place engage in violent, abusive, indecent, profane, boisterous, unreasonable, loud, or other disorderly conduct which tends to cause or provoke an immediate disturbance of public order or tends to disturb or annoy any other person or persons.

**(B)** Intentionally cause, provoke, or engage in any fight, brawl, riot or noisy altercation.

**(C)** No person shall disturb a public meeting or loiter about a place of public assemblage.

**(3) INTOXICATION DRUNKENNESS.**

**(A)** It shall be unlawful for any person to be so intoxicated that he is a nuisance to others, or is unable to care for his own safety in a public place in the Village of New Auburn. Any person who violates this ordinance shall upon conviction thereof, be subject to a penalty of \$25.00.

(B) In accordance with Section 51.45, Wis. Stats., a person who appears to be incapacitated by alcohol shall be placed in protective custody pursuant to Sec. 51.45(11) and (12).

(4) **ASSAULT AND BATTERY.**

(A) No person shall commit an assault and battery upon another.

(5) **MOLESTING BIRDS AND SQUIRRELS.**

(A) No person shall injure or attempt to injure any harmless birds, their nests or their eggs or any squirrels within the Village.

(6) **REGULATION OF WEAPONS OTHER THAN FIREARMS, INCLUDING BOWS AND ARROWS, BB GUNS, AIR GUNS AND WEAPONS OTHER THAN FIREARMS.**

(A) **Discharging and Carrying Weapons Prohibited.** No person except a Marshall or other duly authorized peace officer in the course of his or her duty shall discharge or use any sling shot, air gun, BB gun, bow and arrow, or any other weapon, within the residential or business district of the Village of New Auburn, or have any sling shot, air gun, BB gun, bow and arrow, or any other weapon in his or her possession or under his or her control unless it is unloaded and knocked down or enclosed within a carrying case or other suitable container except when written or oral permission to discharge such weapons is obtained from the Village Board or Village Marshall for varmint control. Any person who violates a provision of this section shall upon conviction thereof forfeit not less than \$10.00 nor more than \$100.00 together with the costs of prosecution, and when in default thereof shall be imprisoned in the County Jail not to exceed 30 days. For purposes of this Ordinance, the term weapon shall not include firearms as defined in Section 167.31(1)(c), Wisconsin Statutes.

(B) This section shall not be construed to prohibit the sale, purchase, trade or repair of such weapons by retail business establishment doing so in the course of its regular business in accord with state and federal laws, nor to hinder a prospective customer from attempting to buy, sell, trade or have repaired weapons to, from or by a retailer.

(C) This section shall not apply to a law enforcement investigator, watchman, guard, security, or military personnel who are permitted by law to carry or bear weapons when acting in the line of duty.

(D) This section shall not apply to the carrying or bearing of a weapon in a bona fide safety or training course or practice firing held at a location approved by the Village of other governmental agency.

(E) This section shall not apply to the School District of New Auburn and its physical education archery curriculum or to any School District of New Auburn –

sponsored function that involves discharging bows and arrows on the School District's property within the Village of New Auburn limits.

(F) This section shall not apply to individuals holding a valid license to carry a concealed weapon issued under Wis. Stat. § 175.60. This section also does not apply to weapons as defined under Wis. Stat. § 175.60(1)(j) when carried by a licensed individual.

**(7) REGULATION OF FIREARMS.**

**(A) Discharging and carrying firearms restricted.** No person except a marshal or other duly authorized peace officer in the course of his or her duty shall discharge any firearm within the residential or business district of the Village of New Auburn, except when written or oral permission to discharge such firearm is obtained from the Village Board or Village Marshall for varmint control. Any person who violates a provision of this section shall upon conviction thereof forfeit not less than \$10.00 nor more than \$100.00 together with the costs of prosecution and when in default thereof shall be imprisoned in the County Jail not to exceed 30 days.

**(B) Possession of firearms - Public Buildings.**

(1) "Firearm" has the meaning in section 13.01(7) of these Ordinances given in Section 167.31(1)(c) Wisconsin Statutes.

(2) "Law enforcement officer" means any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the law or ordinances he or she is employed to enforce.

(3) No invitee, except a law enforcement officer acting in the scope of his or her employment, shall have in his or her possession, carry or bear any firearm within any publicly owned building within the Village.

(4) This section shall not be construed to prohibit the sale, purchase, trade or repair of firearms by a retail business establishment doing so in the course of its regular business in accord with state and federal laws, nor to hinder a prospective customer from attempting to buy, sell, trade or have repaired firearms to, from or by a retailer.

(5) This section shall not apply to a law enforcement investigator, watchman, guard, security or military personnel who are permitted by law to carry or bear a firearm, when acting in the line of duty.

(6) This section shall not apply to the carrying or bearing of a firearm in a bona fide firearm safety or training course or practice firing held at a location approved by the Village or other governmental agency. Note: For other regulations on firearms, see Section 13.01 of these Ordinances.

(C) This section shall not apply and may not be enforced if the conduct of the actor of discharging his or her weapon was justified or, had it been subject to a criminal penalty, would have been subject to a defense describe in Wis. Stat. § 939.45.

(8) **ABANDONED OR UNATTENDED REFRIGERATORS, ETC.** No person shall leave outside any building, dwelling or at a place accessible to children, any unattended or discarded ice box, refrigerator or other container which has an airtight door which may not be opened from the inside.

(9) **UNGUARDED OPENINGS.** The owner or occupant of any lot or parcel of land within the Village shall not leave unguarded or unprotected by barriers and flares any open cistern, well, vault door, excavation or other opening on such lot or parcel.

(10) **OBSTRUCTION OF AISLES, FIRE ESCAPES, ETC.** No person shall obstruct an aisle, fire escape, entrance or exit of a public building or building used for the assemblage of more than 10 persons.

(11) **HUNTING PROHIBITED.** No person shall hunt, trap, shoot, or kill any wild animal or bird within the Village, except as authorized by the Village Board or as authorized by the Village Marshal for varmint control and except in areas designated for hunting by the Village Board and in Appendix I.

(12) **LOUD AND UNNECESSARY NOISE PROHIBITED.** No person shall make or cause to be made loud, disturbing or unnecessary sounds or noises such as tend to annoy or disturb another in or about any public street, alley, or park of any private residence. (See Chapter 24)

(13) **OBEDIENCE TO OFFICERS.** No person shall, without reasonable excuse or justification, resist or in any other way interfere with any officer of the Village while such officer is doing any act in his official capacity and with lawful authority.

(14) **BEER OR LIQUOR CONSUMPTION ON STREETS PROHIBITED**

(A) No person shall possess open containers of or consume fermented malt beverages or intoxicating liquor as defined by Chapter 125, Wisconsin Statutes which definitions are incorporated herein by reference, upon any street, sidewalk, alley, boulevard, parking lot or other public way within the Village, except at such times and in such places as may be specifically exempted temporarily from the provisions of this Section by the Village Board in connection with public celebrations or other activities. Also specifically exempted are premises within the Village Park.

(B) It is unlawful for any individual under the legal drinking age, not accompanied by his parent or guardian or a chaperon, to possess fermented malt beverages outside of a licensed premises. A chaperon is defined to be a mature, responsible adult who is present to ensure propriety at the gathering of young persons.

(C) It is unlawful for any person under the legal drinking age to procure, seek to procure or consume in public any intoxicating liquor.

(D) It is the intent of the Village of New Auburn that Sections 125.07(4) and 125.09, Wisconsin Statutes, are hereby adopted and incorporated in the ordinances of the Village of New Auburn.

(E) The words "fermented malt beverages" and "intoxicating liquor" are to be defined the same as they are defined in the Wisconsin Statutes. For purposes of this section, "legal drinking age" shall be defined as the legal drinking age established by the State of Wisconsin as the same may be amended from time to time.

(F) Violating this subsection shall be subject to a forfeiture of not more than \$25.00, except that disposition at proceedings against a person under 18 years of age shall be as provided by Section 48.344, Wisconsin Statutes, as amended from time-to-time.

**(15) IMPERSONATING POLICE OFFICERS.** No person shall impersonate a Village Marshal or peace officer within the Village.

**(16) RESPONSIBILITY FOR POSSESSION OR CONSUMPTION OF ALCOHOLIC BEVERAGES BY UNDERAGE PERSONS.**

(A) No person who has attained the legal drinking age may knowingly permit or fail to take action to prevent the illegal consumption of fermented malt beverages or intoxicating liquor by any underage person on the premises owned by the person or under the person's control.

(B) No person who has attained the legal drinking age may intentionally encourage or contribute to a violation of any State law or Village ordinance related to the possession or consumption of fermented malt beverages or intoxicating liquor by any underage person.

(C) For purposes of this section, "underage person" shall be defined as an individual who has not attained the age of 21 years.

(D) Any person who shall violate the provisions of Section 13.01(16)(A) or (B) shall be subject to a forfeiture of not less than \$100.00 nor more than \$500.00 for the first offense, and not less than \$250.00 nor more than \$500.00 for the second offense and subsequent offenses.

**(17) OFFENSES ENDANGERING PUBLIC MORALS AND DECENCY**

**(A) Gambling, Lotteries, Fraudulent Devices and Practices Prohibited.** All forms of gambling, lotteries and fraudulent devices and practices are prohibited within

the Village. Any peace officer or policeman of the Village is hereby authorized to seize anything devised solely for gambling or found in actual use for gambling within the Village and to dispose thereof after a judicial determination that said device was used solely for gambling or found in actual use for gambling.

(B) **Disorderly Houses Prohibited.** No person shall keep a disorderly house or house of prostitution within the Village.

(C) **Loitering**

(1) **Loitering or Prowling Prohibited, Generally.** No person shall loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person takes flight upon appearance of a police or a peace officer, refuses to identify themselves or manifestly endeavors to conceal themselves or any object. Unless flight by the person or other circumstances make it impractical, a police or peace officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm which would otherwise be warranted by requesting him or her to identify themselves and explain their presence and conduct. No person shall be convicted of an offense under this section if the police or peace officer did not comply with the preceding sentence or if it appears at trial that the explanation given by the person was true and, if believed by the police or peace officer at the time, would have dispelled the alarm.

(2) **Obstruction of Traffic by Loitering.** No person shall loiter upon the public streets, alleys, sidewalks, street crossings or bridges or in any other public place within the Village in such a manner as to prevent, interfere with or obstruct the ordinary free use of such public streets, alleys, sidewalks, street crossings, or bridges or other public places by persons passing along and over the same. It shall be an offense under this subsection for a person to refuse to discontinue such loitering after a request to do so by a police officer.

(3) **Obstruction of Entryways by Loitering.** No person shall loiter upon the public streets, private driveways or sidewalks or in adjacent doorways or entrances so as to obstruct the free entry of persons to the adjacent property, driveways or other entrances to such property. It shall be an offense under this subsection for a person to refuse to discontinue such loitering after being requested to do so by a police officer.

(4) **Loitering in Places of Public Assembly or Use.** No person shall by loitering interfere with the free use of any place of public assembly, or public use or others using such place of assembly. It shall be an offense under this subsection for a person to refuse to discontinue such loitering after a request to do so by a police officer or by the person in charge of the place of public assembly.



**(5) Loitering on Private Premises without Invitation.** No person shall loiter on private premises without invitation from the owner or occupant. It shall be an offense under this subsection for a person to refuse to discontinue such loitering after being requested to do so by a police officer or by owner or occupant.

**(6) Loiter** means to linger, stand around, move slowly about, remain or spend time idly in a public building, public land, in a public facility or any public place.

**(18) INDECENT CONDUCT AND LANGUAGE PROHIBITED.** No person shall use an indecent, vile, profane, or obscene language or conduct himself in any indecent, lewd, lascivious, or obscene manner within the Village. It shall be a violation of this subsection for any person to sell, give away or distribute within the Village any obscene show or exhibition.

**(19) CURFEW.**

**(A)** No child 16 years of age or under shall loiter, idle or remain, and no parent or guardian shall knowingly permit his child or ward of such age to loiter, idle, or remain in or upon any of the streets, alleys or public places in the Village between the hours of 10:00 p.m. and 6:00 a.m. unless such child is accompanied by a parent, guardian, or some person of lawful age having legal custody of such child. This subsection shall not prohibit such child from performing an errand of duty if directed by his parent or guardian or of urgent necessity or from pursuing the duties of his employment in an expeditious and orderly manner or from going to or from places of business or amusement or private homes. This subsection shall not prohibit such child from riding in an automobile on Village streets.

**(B) Arrest.** Any person who shall violate any of the provisions of Sec. 13.01(20)(a) shall be subject to arrest without warrant by a police officer of the Village and upon his or her arrest shall be delivered by such officer to his or her parents or guardian. Upon conviction he or she shall forfeit not less than \$1.00 nor more than \$10.00 and the costs of prosecution. The provisions of Sec. 48.19 and 48.20 of the Children's Code as amended from time-to-time shall control taking a child into custody and release or delivery from custody.

**(20) OFFENSES AGAINST PUBLIC AND PRIVATE PROPERTY; DESTRUCTION OF PROPERTY PROHIBITED.** No person shall willfully injure or intentionally deface, destroy or unlawfully remove, take or meddle with any property belonging to the Village or its departments or to any private person without the consent of the owner or proper authority. Any person convicted of a violation of this section shall also be required to make full restitution for the amount of any damages caused to such property.

**(21) PENALTIES.** Any person who shall violate a provision of this ordinance shall upon conviction thereof be subject to a penalty as provided herein:

(A) For violation of ordinances for which a statutory counterpart exists, the range of forfeitures (exclusive of penalties of imprisonment) shall be the range prescribed by Wisconsin Statute. The deposit for such violations shall be as provided in the Uniform Bond Schedule as revised from time-to-time.

(B) Any person who shall violate any provision of this chapter, except ordinances which a statutory counterpart exists, except which have a specific penalty set forth therein, for which the penalties set forth therein apply, shall upon conviction thereof be subject to a penalty which shall be as follows:

(1) **First Offense** - Penalty. Any person who shall violate any provision of this code subject to a penalty shall, upon conviction thereof, forfeit not less than \$10.00 nor more than \$200.00 together with the costs of prosecution and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the County Jail until said forfeiture and costs are paid, but not exceeding 90 days.

(2) **Second Offense** - Penalty. Any person found guilty of violating any ordinance or part of an ordinance of this code who shall previously have been convicted of a violation of the same ordinance shall upon conviction thereof, forfeit not less than \$20.00 nor more than \$200.00 for each such offense, together with the costs of prosecution and in default of payment of such forfeiture and costs shall be imprisoned in the County Jail until said forfeiture and costs of prosecution are paid, but not to exceed 6 months.

## **(22) VILLAGE PARK HOURS AND PERMITS.**

(A) All parks except recognized camping areas shall be closed to public use between the hours of 10:30 p.m. and 6:00 a.m. each day of the year.

(B) The time referred to in this section shall be the official time used in the State of Wisconsin at the time of the alleged violation.

(C) Any person violating this chapter shall forfeit not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) and the costs of prosecution, and in default of payment of such forfeiture and costs shall be imprisoned in the County Jail until said forfeiture and costs are paid, but not exceeding 30 days.

(D) **Permits For Night Use.** The Village Board of Trustees may if it finds that no vandalism or loud or disorderly conduct is likely to occur, grant to any group permission to use a specified park or beach for a specified night or nights. As a condition to granting such permission, the Village Board may require the posting of a reasonable bond, or the presence of a police officer or deputy sheriff, to be paid by the group seeking the permit. The permit may be revoked at any time by the Village Board authorized to oversee or inspect the permitted use.

## **(23) SALE OF CIGARETTES AND TOBACCO PRODUCTS TO CHILDREN RESTRICTED.**

**(A) State Statutes Adopted.** The provisions of Section 48.983 of the Wisconsin Statutes and Section 134.66 of the Wisconsin Statutes as amended from time-to-time, defining and regulating the sale, procurement, dispensing, and transfer of cigarettes and tobacco products and regulating location of vending machines, including provisions relating to penalty to be imposed or the punishment for violation of such statutes, but exclusive of any statutory penalty of imprisonment (no penalty of imprisonment may be imposed for ordinance violations; forfeiture only may be imposed) are adopted and made a part of this section by reference. A violation for such provisions shall constitute a violation of this section.

**(B) Forfeitures For Children.** Forfeitures imposed upon children for violations of this ordinance shall be limited to forfeitures not exceeding \$25.00 plus costs subject to Wis. Stat Sec. 48.37 and Sec. 938.37.

## **(24) OPEN BURNING USE OF INCINERATORS AND USE OF BURN BARRELS PROHIBITED**

**(A) Policy** It is the policy of the Village of New Auburn to not permit open burning of garbage and debris in the Village of New Auburn. It is the policy of the Village of New Auburn to prohibit the use of incinerators or burn barrels in the Village of New Auburn.

### **(B) Definitions**

**(1)** "Open burning" shall mean herein the burning of debris or garbage on the ground or in an open area without any means to contain the fire from spreading.

**(2)** "Use of burn barrels or incinerators" means burning of debris or garbage in barrels or other like open incinerators, including fire box incinerators.

**(3)** "Potential hazard" shall mean herein a dangerous situation affecting the citizens of the Village during the igniting, burning, blowing around of, or after the burning of garbage or debris.

### **(C) Unlawful Practices**

**(1)** It shall be unlawful for any person or entity to do open burning of garbage or debris in the Village of New Auburn, except that leaves, brush, scrap lumber or similar material may be burned by persons or entities on their own premises with a Fire Safety Permit. Such permit shall be issued by the Village of New Auburn Marshal, Chief of the New Auburn Area Fire Department, or their designee, with such permit to include any restrictions set forth by the Fire Chief and/or Village Marshal and/or Village Board to ensure public safety. Such materials must be placed in a safe area and at least 30 feet from any buildings.

(2) It shall be unlawful for any person or entity to use burn barrels or incinerators for the burning of debris or garbage within the Village of New Auburn, except that:

(a) Burning in outdoor fireplaces of wood, charcoal and other fossil fuels for warming or cooking is not prohibited.

(b) Burning in wood stoves or furnaces of wood, wood pallets, wood chips or other fossil fuels for fuel for home heating or heating of buildings is not prohibited.

(D) **Responsibility** Any person allowing a fire to escape from their control shall be responsible for all suppression costs. Such costs shall be payable within 60 days after receipt of an invoice for such suppression costs from the New Auburn Area Fire Department. Upon failure to pay such costs, the Village of New Auburn or New Auburn Area Fire Department may take action for collection of such costs at any time within two (2) years from date of occurrence.

(E) **Ban of all burning, including open burning, burning in incinerators, or burning of brush, wood trash, and waste.**

(1) During emergency fire days as established by the Wisconsin Department of Natural Resources, no burning shall be permitted within the Village of New Auburn.

(2) The Village Board of the Village of New Auburn may declare certain areas of the Village from time-to-time as being areas where burning is potentially hazardous to public safety. During such times and for such periods, no burning shall be permitted nor Fire Safety Permits issued.

(F) **Procedures and Remedies**

(1) Persons or entities violating subsection (C)(1) of this ordinance are subject to a forfeiture of not less than \$10.00, nor more than \$100.00 for the first offense; and not less than \$25.00 nor more than \$200.00 for the second and subsequent offenses.

(2) Persons or entities violating subsection (C)(2) (burn barrels or incinerators) of this ordinance shall be proceeded against as follows:

a. **First Notice** - A written notice from the Village Clerk either sent by Certified Return Receipt mail or delivered in person by the Village Marshal or his designee. This notice shall give 10 days to correct the burning violation.

b. **Second and Third Notices** - If not corrected by notice in (a) above, after five days the fine schedule for second and third notice shall apply. Second and third notice shall come at 5 day intervals after the first notice time period has lapsed.

**c. Fourth Notice** - If the first three notices and fines do not meet with successful stoppage of open burning in the designated areas, the matter shall be referred to the Village Attorney by the Village Clerk, or designee, or the Village Marshal or designee and litigation in Circuit Court shall ensue.

**d. Penalties** (Notices below referred to are those cited in this ordinance)

(a) First Notice	No fine
(b) Second Notice	\$25.00 fine imposed
(c) Third Notice	\$100.00 fine imposed
(d) Fourth Notice	Subpoena or summons to appear in Circuit Court for litigation

**(G) Severability of Invalid Provisions.** In case any one or more of the sections, subsections, clauses, or provisions of this ordinance, or the application of such sections, subsections, clauses or provisions to any situations, circumstances or person shall for any reason be held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect any other sections or provisions or sections of this ordinance or the application of such sections, subsections, clauses, or provisions to any other situation, circumstance, or person, and it is intended that this ordinance shall be construed and applied as if such section or provision so held unconstitutional or invalid has not been included in this ordinance.

## **(25) PROCEDURE FOR VIOLATIONS OF ORDINANCES BY JUVENILES**

**(A) Juvenile State Laws Adopted.** Except as otherwise specifically provided this chapter, the statutory provisions in Chapter 938, Wis. Stats., describing and defining dispositions and sanctions involving juveniles, are adopted and by reference made a part of this chapter as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this chapter. Any future amendments, revisions, or modifications of the statutes incorporated herein are intended to be made part of this chapter in order to secure uniform statewide regulation of juveniles in the State of Wisconsin.

**(B) Procedure.** The procedure for civil law and ordinance proceedings against juveniles shall be that set forth in Chapter 938 and other applicable Wisconsin Statutes, as amended from time-to-time. Citation forms under Sec. 66.119 may be used. Whenever the juvenile justice code requires a different procedure than that set forth in these ordinances for adult violations of ordinances, the juvenile justice code shall control.

**(C) Jurisdiction.** Jurisdiction over traffic and boating civil law and ordinance violations for juveniles shall be as set forth in Chapter 938 Wis. Stats., as amended from time-to-time.

**(D) Taking a Juvenile Into Custody And Release Or Delivery From Custody.** The provisions of Chapter 938 Wis. Stats., shall govern to determine when a juvenile may be taken into custody and the release or delivery from custody.

**(E) Disposition Of Juvenile Adjudged To Have Violated A Civil Law Or Ordinance.** The provisions of Chapter 938 (juvenile justice code) Wis. Stats., as amended from time-to-time are adopted with respect to the disposition of a juvenile adjudged to have violated an ordinance including the provisions for suspension of operating privileges as defined in Sec. 340.01(40) Wis. Stats.

**(F) Disposition of Juvenile --Intoxicating Liquor And Beer Violations.** The provisions of Chapter 938 (juvenile justice code) Wis. Stats., as amended from time-to-time are adopted with respect to the disposition of a juvenile aged 14 and older adjudged to have violated intoxicating liquor or beer ordinances including the provisions for suspension of operating privileges as defined in Sec. 340.01(40) Wis. Stats.

**(G) Intent.** The intent of this ordinance is to recognize the special requirements and procedures of the juvenile justice code of the State of Wisconsin and to apply said code for all ordinance violations where mandated by Wisconsin Statutes notwithstanding other provisions of municipal ordinances and procedures which apply to adults. Where conflict exists in procedure or provisions of the children's code with other ordinance procedure or provisions for ordinance violations, provisions of the juvenile justice code shall prevail.

**(26) SCHOOL ATTENDANCE ENFORCEMENT.**

**(A) Authority.** This section is enacted by authority of Wis. Stat. Sec. 118.163(1m), (2), and (2m).

**(B) Definitions.** For purposes of this section:

**(1) “Dropout”** means a child who ceased to attend school, does not attend a public or private school, technical college or home-based private educational program on a full-time basis, has not graduated from high school and does not have an acceptable excuse under Sec. 118.15(b) to (d) or (3).

**(2) “Habitual truant”** means a pupil who is absent from school without an acceptable excuse as defined in Sec. 118.15 and Sec. 118.16(4) for a part of all of five or more days on which school is held during a school semester.

**(3) “Operating privilege”** has the meaning given in Sec. 340.01(40).

**(4) “Truant”** means a pupil who is absent from school without an acceptable excuse under Sec. 118.15 and Sec. 118.16(4) for a part or all of any day on which school is held during a school semester.

**(C) Prohibition Against Being a Truant.** Any person attending school in the Village of New Auburn under the age of 18 years, subject to the exceptions found under

Wis. Stat. Sec. 118.15, is prohibited from being a truant as the term is defined in this section.

**(D) Dispositions Available to the Municipal Court.** The Municipal Court shall be entitled to enforce the following dispositions for a person adjudged a truant:

(1) An order for the person to attend school;

(2) A forfeiture of not more than \$25 plus costs for a first violation, or a forfeiture of not more than \$50 plus costs for any second or subsequent violation committed within 12 months of a previous violation, subject to Sec. 938.37, and subject to a maximum cumulative forfeiture amount of not more than \$500 for all violations committed during a school semester. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardian of the person or both.

**(E) Prohibition Against Being A habitual Truant.** Any person attending school in the Village of New Auburn under the age of 18 years, subject to the exceptions found under Wis. Stat. Sec. 118.15 and 118.16(4), is prohibited from being a habitual truant as the term is defined in this section.

**(F) Dispositions Available to the Municipal Court.** The Municipal Court shall have available the following dispositions for a habitual truant:

(1) An order for the person to attend school.

(2) Suspension of the person's operating privilege for not less than 30 days or more than one year. The Court shall immediately take possession of any suspended license and forward it to the Department of Transportation together with a notice stating the reason for and the duration of the suspension.

(3) An order for the person to participate in counseling or a supervised work program or other community service work as described in Wis. Stat. Sec. 938.34(5g), the costs of any such counseling, supervised work program or other community service work may be assessed against the person, the parents or guardian of the person, or both.

(4) An order for the child to remain at home except during hours in which the child is attending religious worship or a school program, including travel time required to get to and from the school program or place of worship. The order may permit a person to leave his or her home if the person is accompanied by a parent or guardian.

(5) An order for the person to attend an educational program as described in Wis. Stat. Sec. 938.34(7d).

(6) An order for the Department of Workforce Development to revoke, under Wis. Stat. Sec. 103.72 a permit under Wis. Stat. Sec. 103.70 authorizing the employment of the person.

(7) An order for the person to be placed in a teen court program as described in Wis. Stat. Sec. 938.342(1g)(f).

(8) A forfeiture of not more than \$500 plus costs, subject to Wis. Stat. Sec. 938.37. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardian of the person, or both.

(9) Any other reasonable conditions consistent with this section, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults.

(10) An order for the person's parent, guardian or legal custodian to participate in counseling at the parent's, guardian's or legal custodian's own expense or to attend school with the person, or both.

**(G) Prohibition Against Being a Dropout.** Any person living in the Village of New Auburn under the age of 18 years, subject to the exceptions found under Wis. Stat. Sec. 118.15, is prohibited from being a dropout as defined in this Ordinance.

**(H) Dispositions Available to the Municipal Court.** The Municipal Court shall have available the following dispositions for a dropout:

(1) All the dispositions contained in Section F above.

(2) For persons at least 16 years of age, but less than 18 years of age, suspension of operating privilege for any duration up until the person reaches the age of 18 years. The Court shall immediately take possession of any suspended license and forward it to the Department of Transportation together with a notice stating the reason for and the duration of the suspension.

**(I) Form of Municipal Citation.** The Village of New Auburn Police Department is authorized to issue a municipal citation to any person who is determined to be a truant, habitual truant or dropout under the terms of this section. Any citation issued shall be returnable to the Chippewa County, Wisconsin, Village of New Auburn Municipal Court, in the same manner as all other Ordinance Citations. The citation is to state on its face that it is a "MUST APPEAR" citation without a forfeiture amount written on the face of the citation.

**(J) Preconditions to Issuance of Citations.** Prior to issuance of a Village of New Auburn municipal citation, the Village of New Auburn School District attendance officer shall provide evidence that appropriate school personnel in the school or school district in which the child is enrolled have, within the school year during which the truancy occurred, done all of the following pursuant to Wis. Stat. section 118.16(5):

(1) Met with the child's parent or guardian to discuss the child's truancy or attempted to meet with the child's parent or guardian and received no response or were refused.



(2) Provided an opportunity for educational counseling to the child to determine whether a change in the child's curriculum would resolve the child's truancy and have considered curriculum modifications under Wis. Stat. Sec. 118.15(1)(d).

(3) Evaluated the child to determine whether learning problems may be a cause of the child's truancy and, if so, have taken steps to overcome the learning problems, except that the child need not be evaluated if tests administered to the child within the previous year indicate that the child is performing at his or her grade level.

(4) Conducted an evaluation to determine whether social problems may be a cause of the child's truancy and, if so, have taken appropriate action or made appropriate referrals.

**(K) Proof Required Before Municipal Court Disposition.** Before a person may be found guilty of violating this section, the school district attendance officer must present evidence to the municipal court that the activities under Wis. Stat. Sec. 118.16(5) have been completed by the school system.

**(L) Adults Prohibited From Contributing to Truancy, Habitual Truancy, or Dropout.** No person of the age of 18 or older shall commit an act of commission or omission that contributed to, or the natural and probable consequences of that act would likely cause, a child to be truant, habitual truant, or dropout, whether or not the child is adjudged guilty of a violation.

**(M) Penalty For Adult Contributing To a Child Truant, Habitual Truant or Dropout.** Any person of the age of 18 or older who contributes to or causes a child to be a truant, habitual truant, or dropout shall pay a forfeiture of not less than \$100 or more than \$500, together with the costs of the prosecution for each offense and upon default of the payment of these forfeitures and costs, shall be imprisoned until the forfeiture and costs together with the subsequent costs are paid, but not more than 60 days. Each day a violation continues shall constitute a separate offense. The standard forfeiture shall be in the sum of \$100 plus costs.

**(N) Severability.** If any section of part of this section is adjudged unconstitutional or invalid by any Court of competent Jurisdiction, the remainder of this section shall not be affected thereby.

## **13.02 NUDE DANCING IN LICENSED ESTABLISHMENTS PROHIBITED.**

### **(1) NUDE DANCING PROHIBITED**

**(A)** It is unlawful for any person to perform or engage in, or for any licensee or manager or agent of the licensee to permit any person, employee, entertainer or patron to perform or engage in any live act, demonstration, dance or exhibition on the premises of a license establishment which:

(B) Shows his or her genitals, pubic area, vulva, anus, anal clef or cleavage with less than a fully opaque covering; or

(C) Shows any portion of female breast below a point immediately above the top of the areola; or

(D) Shows the covered male genitals in a discernibly turgid state.

(2) **EXEMPTIONS.** The provisions of this ordinance do not apply to the following licensed establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis and in which the predominant business or attraction is not the offering to customers of entertainment which is intended to provide sexual stimulation or sexual gratification to such customers and where the establishment is not distinguished by an emphasis on, or the advertising or promotion of, employee engaging in nude erotic dancing.

(3) **DEFINITIONS.** For purposes of this ordinance, the term “licensed establishment” means any establishment licensed by the Village Board of the Village of New Auburn to sell alcohol beverages pursuant to Ch. 125, Stats. The term “licensee” means the holder of a retail “Class A”, “Class B”, Class “A”, Class “B”, or Class “C” license granted by the Village Board of the Village of New Auburn pursuant to Ch. 125, Stats.

(4) **PENALTIES.** Any person, partnership, or corporation who violates any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$50.00, and not more than \$500.00 per violation. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this ordinance constitutes sufficient grounds for suspending, revoking, or non-renewing an alcohol beverage license under sec. 125.12, Stats.

(5) **SEVERABILITY.** If any section of this ordinance is found to be unconstitutional or otherwise invalid, the validity of the remaining sections shall not be affected.

### **13.03 SMOKING PROHIBITED**

#### **(1) STATEWIDE SMOKING BAN**

(A) Smoking Ban Adopted. The Village hereby adopts, by reference, the provisions of Wis. Stat. §101.123, smoking prohibited, pertaining to the statewide smoking ban.

(B) Definitions. For purposes of enforcing the smoking ban in the Village of New Auburn, the following definition shall apply instead of the definition found in the state statutes. “Enclosed place” shall mean all space between a floor and a ceiling that is bounded by walls, doors, or windows, whether open or closed, covering more than

50% of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door or other physical barrier, whether temporary or permanent. A 0.011 gauge screen with an 18x16 mesh count is not a wall.

**(C) Smoking in Specified Outdoor Areas.** A person in charge of a restaurant, tavern, private club, or retail establishment located in the Village of New Auburn may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern, private club, or retail establishment where customers, employees, or persons associated with the restaurant, tavern, private club, or retail establishment may smoke.

**(D) Inspection and Enforcement.** The New Auburn Village Police Department and Fire Inspector shall have the power to enter any premises subject to the smoking ban under state law to ascertain whether the premises are in compliance with this section and take appropriate enforcement action pursuant to Wis. Stat. § 101.123.

**(2) PENALTIES.** The penalties for violation of these sections shall be the forfeitures as provided in Sections 13.01(21).

**(3) SEVERABILITY.** In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holdings shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Village Board that this ordinance should have been adopted if such illegal provision had not been included or any illegal application had not been made.