

**CHAPTER 9**  
**PUBLIC PEACE AND GOOD ORDER**

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**9.01 OFFENSES AGAINST STATE LAWS SUBJECT TO FORFEITURE.**

The following statutes, preceded by the prefix "9", defining offenses against the peace and good order of the State are adopted by reference to define offenses against the peace and good order of the municipality provided the penalty for the commission of such offenses hereunder shall be limited to a forfeiture imposed under Section 25.04 of this Municipal Code, unless otherwise limited by state law, in which case such limitation shall apply.

- 9.254.92 Purchase or possession of cigarettes or tobacco products by person under age eighteen (18) prohibited
- 9.939.05 Parties to offense
- 9.939.22 Words and phrases defined
- 9.940.19(1) Battery
- 9.940.34 Duty to aid victim or report crime
- 9.940.42 Intimidation of witness (only for municipal cases)
- 9.940.44 Intimidation of victim (only for municipal cases)
- 9.940.46 Attempt prosecuted as completed act
- 9.941.01 Negligent operation of vehicle
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- 9.941.12(2) and (3) Interfering with firefighting
- 9.941.13 False alarms
- 9.941.20(1) Endangering safety by use of dangerous weapon
- 9.941.23 Carrying concealed weapon
- 9.941.235 Carrying firearm in public building
- 9.941.237 Carrying handgun where alcoholic beverages may be sold and consumed

9.941.24 Possession of switchblade knife

9.941.2965 Restriction on use of facsimile firearms

9.941.297 Sale or distribution of imitation firearms

9.941.35 Emergency telephone calls

9.941.36 Fraudulent tapping of electric wires or gas or water meters or pipes

9.941.37(1) and (2) Obstructing emergency or rescue personnel

9.942.01 Defamation

9.942.03 Giving false information for publication

9.942.05 Opening letters

9.943.01 Criminal trespass to property

9.943.017(1) Graffiti

9.943.07 Criminal damage to railroad

9.943.11 Entry into locked vehicle

9.943.125 Entry into locked coin box

9.943.13 Trespass to land

9.943.14 Criminal trespass to dwellings

9.943.145 Criminal trespass to medical facility

9.943.15 Entry onto a construction site or into a locked building, dwelling or room

9.943.20 Theft

9.943.207 Transfer of recorded sounds for unlawful use

9.943.21 Fraud on hotel or restaurant keeper

9.943.215 Absconding without paying rent

9.943.22            Use of cheating tokens

9.943.23(1),  
  (4m) and (6)    Operate without owners consent

9.943.24            Issuance of worthless check

9.943.26(1)        Removing or damaging encumbered real property

9.943.34(1) (a)  
  and (2)         Receiving stolen property (Under \$1,000)

9.943.37            Alteration of property identification marks

9.943.392          Fraudulent data alteration

9.943.41            Financial transaction card crimes

9.943.45            Obtaining telecommunications services by fraud  
                  (under \$1,000)

9.943.455          Theft of cellular telephone service

9.943.46            Theft of cable TV services

9.943.47            Theft of satellite cable programming

9.943.50            Retail theft (shoplifting)

9.943.55            Removal of shopping cart

9.943.61            Theft of library materials

9.944.17            Sexual gratification

9.944.20            Lewd and lascivious behavior

9.944.30            Prostitution

9.944.31            Patronizing prostitutes

9.944.33            Pandering

9.944.36            Solicitation of drinks prohibited

9.945.01            Definitions (for gambling)

9.945.02	Gambling
9.945.04	Permitting premises to be used for commercial gambling
9.945.07	Gambling by participants in contest
9.945.12	Endless sales chains
9.946.06	Improper use of the flag
9.946.40	Refusing to aid officer
9.946.41(1), (2) and (3)	Resisting or obstructing officer
9.946.42(1) and (2)	Escape
9.946.46	Encouraging violation of probation or parole
9.946.67	Compounding crime
9.946.68	Simulating legal process
9.946.69	Falsely assuming to act as public officer or employee or utility employee
9.946.70(1)	Impersonating peace officers
9.946.72(2)	Tampering with public records and notices
9.947.01	Disorderly Conduct
9.947.012	Unlawful use of telephone
9.947.0125	Unlawful use of computerized communication systems
9.947.013	Harassment
9.947.02	Vagrancy
9.947.04	Drinking in common carriers
9.947.06	Unlawful assemblies and their suppression

- 9.948.01 Definitions (crimes against children)
- 9.948.40 Contributing to the delinquency of a child (except felony provisions)
- 9.948.45 Contributing to truancy
- 9.948.55 Leaving or storing loaded firearm within the reach or easy access of a child
- 9.948.60 Possession of a dangerous weapon by a child (except felony provisions)
- 9.948.63 Receiving property from a child
- 9.948.70 Tattooing of children
- 9.951.01 thru
- 9.951.17 Crimes against animals (except felony provisions)

Established April 17, 2001, Ordinance No. 229; revised May 18, 2004, Ordinance No. 249

## **9.02 DISCHARGE OF WEAPONS.**

(1) DEFINITION. A weapon is defined as any instrumentality from which or within which a shot, bullet, pellet, arrow or bolt may be discharged or expelled, regardless of whether the propelling is provided by air, spring or other similar mechanical device or by gunpowder.

(2) DISCHARGE PROHIBITED. No person, other than a police officer or other law enforcement officer in the performance of an official duty, may discharge or fire any weapon in the following locations:

(a) On property owned or under the care, custody and control of the Town of Delavan.

(b) On property that is zoned as and utilized as residential land.

(c) Within 300 feet of any building that is normally utilized for human occupancy, regardless of the zoning of the land upon which it sits. This would include but not be limited to homes, businesses, schools, churches and public warming areas. The 300 foot distance shall not be effective on lands zoned agricultural when it is the owner/occupant that is discharging a firearm upon his own land.

(d) No person shall discharge a firearm within the right-of-way of any State, County or Town highway or road or in any public park, parking area or other area marked by signs prohibiting the same.

(3) Notwithstanding any provision of Sec. 9.02(2) to the contrary, the Town Board or its designee may, upon written application demonstrating good cause and upon such terms and conditions as it may prescribe as to time, place and circumstance, suspend the enforcement of said paragraph.

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Established April 17, 2001, Ordinance No. 229

**9.03 THROWING OR SHOOTING MISSILES AND PROJECTILES.** No person shall throw or shoot any object, arrow, stone, snowball or other missile or projectile, by hand or by an other means, at any person or vehicle or at, in or into any building, street, sidewalk, alley, highway, park, playground or other public place within the Town.

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Established April 17, 2001, Ordinance No. 229

**9.04 FIREWORKS REGULATED.**

(1) SALES PROHIBITED. No person may sell, expose or offer for sale in the Town of Delavan any firecracker, bottle rocket, cherry bomb, the type of balloon which requires fire underneath to propel it, torpedoes, sky rockets, Roman candles, aerial salutes, American or Chinese bombs or other fireworks of like construction, or any other fireworks containing any explosives of like construction, or any fireworks containing any explosives or flammable compound.

(2) **STORAGE AND WHOLESALING.** This section does not prohibit any resident, wholesaler, dealer or jobber firm from selling fireworks at wholesale, provided they are shipped or delivered directly outside the Town limits.

(3) **EXCEPTIONS FOR USE.**

(a) Permits for the use of fireworks other than those prohibited by Sec. 167.10(6), Wis. Stats., by public authorities, amusement parks or civic organizations, may be given by the Town Chairperson upon application and upon his or her satisfaction as to the purpose and supervision and handling of such fireworks.

(b) The prohibition of the use or discharge of fireworks within the Town of Delavan without a permit from the Town Chairperson of the Town of Delavan shall not apply to the following type items:

(i) Fuel or lubricant.

(ii) Firearm cartridge or shotgun shell when used in accordance with all pertaining laws and ordinances.

(iii) A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, water craft or motor vehicle.

(iv) A match, cigarette lighter, stove, furnace, candle, lantern or space heater.

(v) A cap containing not more than one-quarter grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.

(vi) A toy snake which contains no mercury.

(vii) A model rocket engine.

(viii) Tobacco and a tobacco product.

(ix) A sparkler on a wire or wood stick not exceeding 36 inches in length or 0.25 inches in outside diameter which does not contain magnesium, chlorate or perchlorate.

(x) A device designed to spray out paper confetti or streamers and which contains less than one quarter grain of explosive mixture.

(xi) A device designed to produce an audible sound but not explode, spark, move or emit an external flame after ignition and which does not exceed three (3) grams in total weight.

(xii) A device that emits smoke with no external flame and does not leave the ground.

(xiii) A cylindrical fountain not exceeding 100 grams in total weight with an inside tube diameter not exceeding 0.75 inches designed to sit on the ground and emit only sparks and smoke.

(xiv) A cone fountain not exceeding 75 grams in total weight, designed to sit on the ground and emit only sparks and smoke.

(4) PARENTAL RESPONSIBILITY. No parent, guardian or other adult with delegated authority of a minor shall knowingly permit such minor to violate any section of this chapter.

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Established April 17, 2001, Ordinance No. 229

#### **9.05 LOUD AND UNNECESSARY NOISE PROHIBITED.**

(1) NOISE RESTRICTIONS. No person shall make or cause to be made any loud, disturbing or unnecessary sounds or noises such as may tend to annoy or disturb another in or about any public street, alley or park or any private residence.

(2) OPERATION OF MOTOR VEHICLES. It shall be a violation of this section for a person to operate a motor vehicle so as to cause the tires thereof to squeal, the horn to blow excessively or the motor to race excessively.

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Established April 17, 2001, Ordinance No. 229

## 9.06 REGULATION OF ALARMS.

### (5) DEFINITIONS.

(a) ALARM shall mean any signal generated by any device designed to be activated by some physical act, fire, emergency or malfunction and intended to alert the police and/or result in the response of emergency services whether it be by police, fire, rescue or combination thereof.

(b) BURGLAR/FIRE ALARM shall mean any device which, when activated by a criminal act, fire, or other emergency requiring police response, transmits a signal to an alarm panel at a police dispatch center, to an alarm receiving firm, or produces an audible or visible signal designed to alert the public within the audible or visual range of the signal.

(c) FALSE ALARMS shall mean a signal from a burglar/fire alarm resulting in the response by the police department, fire department or rescue unit or any combination thereof when an emergency situation does not exist. Excepted from this definition shall be errant alarms which are storm related or the result of malfunctions due to problems with or interruptions of power at its sources or in electrical lines or due to activity at the alarm site where the possibility of errant alarms during a specific period has been made known to the Police Department.

(d) Automatic Telephone Calling Device. Any device which, upon activation, is capable of automatically selecting a telephone trunk line and causing it to be transmitted over such line a pre-recorded message.

(e) Answering Service. A facility equipped with incoming and outgoing telephone communications and operated by a natural person who acts to receive and interpret information through incoming telephone communications and to relay such information to another, by means of an outgoing person-to-person telephone communication.

### (6) PERMISSIBLE ALARMS.

(a) Burglar/Fire alarms which are not audible to the public and which can be properly connected to an alarm panel at a police dispatch center or to an alarm receiving firm are deemed to be permissible alarms and they shall be so maintained so as not to produce false alarms.

(7) ALARM SYSTEMS PROHIBITED.

(a) Outside burglar/fire alarm systems whose alarms are or would be audible to the public, whether for business, industry or residential, or any other use. Outside systems that were installed prior to the effective date of this ordinance may continue in operation; but when the system is in need of replacement, the replacement system shall conform with this ordinance.

(8) USE OF AUTOMATIC TELEPHONE CALLING DEVICE REGULATED.

(a) No person shall install or use, or permit the installation or use upon property owned by such person of an automatic telephone calling device in a manner that such device is capable of automatic selection of a telephone trunk line to the Town of Delavan Police Department.

(b) Nothing in this section shall prohibit the use or installation of an automatic telephone calling device in a manner such that said device is capable of automatic selection of a telephone trunk line to an answering service other than the Town of Delavan Police Department.

(9) REGISTRATION OF ALARM SYSTEMS AND KEYHOLDERS.

(a) Every alarm system operated within the Town of Delavan shall be registered prior to the time such system becomes operable, and annually, on or before the 30<sup>th</sup> day of January, in each succeeding calendar year. Registration shall be upon forms provided by the Town of Delavan Police Department and shall include information required by said Department. The owner and the operator of such alarm system shall be responsible individually for such registration.

In registering an alarm system as required by this paragraph, the operator and/or the owner thereof shall provide to the Town of Delavan Police Department the names and telephone numbers of not less than two other persons who can be contacted by telephone at any and all times, day or night, who are authorized to respond to an alarm given by the alarm system. Persons who can open and enter the premises wherein the alarm system is located, and who have the capability of terminating the alarm being emitted by the alarm system.

(10) NOTIFICATION OF DURATION OF MAINTENANCE OF ALARM SYSTEM.

(a) Any person providing maintenance with respect to any alarm system which might reasonably be expected to cause such system to emit a false alarm, or to cause such system to be deactivated so as to be incapable of emitting an alarm shall give notice to the Town of Delavan Police Department of the intention of such person to provide such maintenance not less than 24 hours in advance as required herein, unless it is impossible or impractical, the person providing such maintenance shall give the greatest prior notice, with respect to such maintenance, which is reasonably possible under the circumstances. In providing such notice, the location of the alarm system to be maintained, and approximate length of time required for such maintenance shall be disclosed.

(11) FALSE ALARMS.

(a) General. Each false alarm requires the response of public safety personnel, involves unnecessary expense to the Town, increases the risk of injury to persons and/or damage to property and dilutes the overall public safety protection to the Town. Such false alarms constitute a public hazard and nuisance and must be abated.

(12) PENALTIES FOR NON-INTENTIONAL FALSE ALARMS.

(a) Administration Charges. Any person, business, corporation or other entity having a permissible alarm system with alarm devices at one or more locations in accordance with this ordinance shall pay to the Town a charge for false alarms responded to by the Police, Fire Department or Rescue Unit according to the following schedule for each calendar year, for each location connected, separate accounts shall be kept for false alarms as to criminal activity, fire, and other emergencies.

(i) Fee Schedule (Police/Rescue response)

(A) First three (3) false alarms per calendar year - NO CHARGE

(B) Fourth (4) false alarm per calendar year - \$35.00

- (C) Fifth (5) false alarm per calendar year - \$45.00
- (D) Sixth (6) false alarm per calendar year - \$55.00
- (E) Seventh and all subsequent false alarms per calendar year - \$75.00

(ii) Fee Schedule (Fire Department Response)

- (A) First two(2) false alarms in calendar year - NO CHARGE
- (B) Third, fourth & fifth false alarms in calendar year - \$100.00 each
- (C) Sixth & all subsequent false alarms in calendar year - \$250.00 each

This section is designed to impose a strict liability on the person, business, corporation or other entity responsible for the alarm connection to either a police dispatch facility or alarm receiving firm to which the emergency services department(s) of the Town have responded and shall be applied regardless of the cause of the FALSE ALARM. Failure to pay such administrative charge(s) in and of itself shall constitute a violation of this section and such charge(s) shall be collectible as a forfeiture upon prosecution and conviction and such charge(s) shall be collectible as a forfeiture upon prosecution and conviction thereof together with any additional forfeiture(s) which may be imposed by the Court in compliance with Section 25.04 of the Municipal Code.

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Established April 17, 2001, Ordinance No. 229

**9.07 LITTERING PROHIBITED.** No person shall throw any glass, refuse or waste, filth or other litter upon the streets, alleys, highways, public parks or other property of the Town or upon any private property or upon the surface of any body of water within the Town.

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

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Established April 17, 2001, Ordinance No. 229; Revised May 15, 2001, Ordinance No. 230

**9.08 RADIO OR TELEVISION INTERFERENCE PROHIBITED.** No person shall operate any machine or equipment which causes interference with radio or television interception, when such interference can be prevented by repairs, adjustments, the installation of corrective appliances or other practicable alterations, at a reasonable expense.

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Established April 17, 2001, Ordinance No. 229

**9.09 LOITERING PROHIBITED.**

(1) LOITERING OR PROWLING. No person shall loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person takes flight upon appearance of a police or peace officer, refuses to identify himself or manifestly endeavors to conceal himself/herself or any object. Unless flight by the person or other circumstances makes it impracticable, 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 the person to identify themselves and explain their presence and conduct. No person shall be convicted of an offense under this subsection 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 HIGHWAY BY LOITERING. No person shall obstruct any street, bridge, sidewalk or crossing by lounging or loitering in or upon the same after being requested to move on by any police officer.

(3) OBSTRUCTION OF TRAFFIC BY LOITERING. No person shall loaf or loiter in groups or crowds upon the public streets, alleys, sidewalks, street crossing or bridges or in any other public places within the Town in such manner as to prevent, interfere with or obstruct the ordinary free use of said public streets, sidewalks, streets, street crossings and bridges or other public places by persons passing along and over the same.

(4) LOITERING AFTER BEING REQUESTED TO MOVE. No person shall loaf or loiter in groups or crowds upon the public streets, sidewalks or adjacent doorways or entrances, street crossings or bridges or in any other public place or on any private premises without invitation from the owner or occupant, after being requested to move by any police officer or by any person in authority at such places.

(5) LOITERING IN PUBLIC PLACES. No person shall loiter, lounge or loaf in or about any depot, theater, dance hall, restaurant, store, public sidewalk, public parking lot or other place of assembly or public use after being requested to move by any police officer. Upon being requested to move, a person must immediately comply with such request by leaving the premises or area thereof at the time of the request.

(6) LOITERING IN SCHOOL AND PLAYGROUND AREAS. No person not in official attendance or on official school business shall enter into, congregate, loiter, wander, stroll, stand or play in any school building or in or about any playground area adjacent thereto within the Town between 8 a.m. and 4 p.m. on official school days.

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Established April 17, 2001, Ordinance No. 229

#### **9.10 RECYCLING ORDINANCE.**

(13) PURPOSE. The purpose of this ordinance is to promote recycling, composting, and resource recovery through the administration of an effective recycling program, as provided in Chapter 287, Wis. Stats. and the Wisconsin Administrative Code.

(14) STATUTORY AUTHORITY. This ordinance is authorized under Sec. 287.09, Wis. Stats.

(15) ABROGATION AND GREATER RESTRICTIONS. It is not intended by this ordinance to repeal, abrogate, annul, impair or interfere with any existing rules, regulations, ordinances or permits previously adopted or issued pursuant to law. However, whenever this ordinance imposes greater restrictions, the provisions of this ordinance shall apply.

(16) DEFINITIONS. For the purposes of this ordinance, the words and phrases used herein shall be as defined in Sec. 287.01, Wis. Stats.

(17) TOWN OF DELAVAN AS RESPONSIBLE UNIT. Pursuant to Sec. 287.09, Wis. Stats., the Town of Delavan shall be the responsible unit charged with all duties and responsibilities required by Chapter 287, Stats. The Town Board may, pursuant to Sec. 66.30, Wis. Stats., designate another unit of government or a solid waste management system under Sec. 59.70(2), Wis. Stats., to be the responsible unit in lieu of the Town.

(18) PROHIBITIONS ON DISPOSAL AND INCINERATION.

(a) Batteries, Major Appliances and Oil. No person may:

(i) Dispose of a lead acid battery or a major appliance in a solid waste disposal facility in this state, except that a person may dispose of a microwave oven in a solid waste disposal facility in this state if the capacitor has been removed and disposed of in accordance with Sec. 299.45(7), if applicable.

(ii) Burn a lead acid battery or a major appliance in a solid waste treatment facility in this state.

(iii) Dispose of waste oil in a solid waste disposal facility or burn waste oil without energy recovery in a solid waste treatment facility in this state.

(b) Yard Waste. No person may dispose of yard waste in a solid waste disposal facility, except in a land spreading facility approved in accordance with Ch. 289, or burn yard waste without energy recovery in a solid waste facility in this state.

(c) General Disposal Restrictions. No person may dispose of in a solid waste disposal facility, or burn without energy recovery in a solid waste treatment facility in this state any of the following:

- (i) An aluminum container.
  - (ii) Corrugated paper or other container board.
  - (iii) Foam polystyrene packaging.
  - (iv) A glass container.
  - (v) A magazine or other material printed on similar paper.
  - (vi) A newspaper or other material printed on newsprint.
  - (vii) Office paper.
  - (viii) A plastic container.
  - (ix) A steel container.
  - (x) A waste tire, as defined in Sec. 289.55(1)(c), Stats.
  - (xi) A container for carbonated or malt beverages that is primarily made of a combination of steel and aluminum.
- (d) General Incineration Restrictions. No person may convert into fuel or burn with energy recovery at a solid waste treatment facility in this state any of the following:
- (i) An aluminum container.
  - (ii) Corrugated paper or other container board.
  - (iii) Foam polystyrene packaging.
  - (iv) A glass container.
  - (v) A magazine or other material printed on similar paper.
  - (vi) A newspaper or other material printed on newsprint.

- (vii) Office paper.
- (viii) A plastic container.
- (ix) A steel container.
- (x) A waste tire, as defined in Sec. 289.55(1)(c), Stats.
- (xi) A container for carbonated or malt beverages that is primarily made of a combination of steel and aluminum.

(e) Exceptions. Exceptions to the foregoing prohibitions shall be as set forth in Sec. 287.07(7), Stats.

(19) RELATED LEGISLATION.

(a) Hauler Licensing. No person or corporation shall engage in the business of hauling recyclables within the Town of Delavan without being licensed by the DNR under Sec. NR 500.06, Wis. Adm. Code, and by the Town of Delavan, pursuant to this Municipal Code.

(b) Processing Facilities. Any contractor operating in the Town of Delavan shall not transport for processing any recyclables to a processing facility unless the contractor notifies the Town of Delavan which facility they are using and said facility is certified by the Wisconsin Department of Natural Resources.

(20) PROPER DISPOSAL OF GARBAGE AND RECYCLABLES.

(a) Antiscavenging or Unlawful Removal of Recyclables. It shall be unlawful for any person, unless under contract with or licensed by the Town of Delavan, to collect or remove any recyclable material that has been deposited or placed at the curb or in a container adjacent to a home or nonresidential building for the purposes of collection for recycling.

(b) No Dumping.

(i) It shall be unlawful for any person to dispose of or dump garbage in any street, alley, or other public place within the Town of Delavan or in any receptacles or private property without the owner's consent unless it is placed in bags

or containers in the manner and at the times specified by this ordinance.

(ii) No person shall place for collection any garbage at the curb not owned or occupied by such person.

(c) Nondisposable Materials. It shall be unlawful for any person to place for disposal any of the following wastes: Hazardous and toxic wastes, chemicals, explosives, flammable liquids, paint, trees and stumps, construction debris, carcasses, medical wastes (except personal needles which shall be contained in rigid plastic containers to eliminate injury to collection personnel).

(21) HAULER SPECIFICATIONS.

(a) Hauler Restrictions. Haulers may not dispose in a landfill or burn in a solid waste facility any recyclable materials generated in the Town of Delavan that have been separated for recycling.

(b) Hauler Licensing. Haulers who collect solid waste or recyclables in the Town of Delavan for storage, treatment, processing, marketing or disposal shall obtain and maintain all necessary municipal and state permits, licenses and approvals prior to collecting any materials in the Town of Delavan. Any hauler operating in the Town of Delavan shall be subject to an annual licensing fee as provided for in Chapter 12 of this Municipal Code.

(c) Reporting Requirements. The recycling haulers and processors operating in the Town of Delavan are required to maintain records and report in writing to the Town Clerk at least twice each year. Reports shall include: the amount of solid waste and recyclables processed and/or marketed by item type from the Town of Delavan, and the final disposal location of solid waste and recyclable material. Failure to report shall be cause for the Town of Delavan to revoke any license or permit of the hauler/processor.

(22) OTHER PROVISIONS.

(a) The Town of Delavan reserves the right to designate additional solid waste materials as recyclable or currently collected materials as no longer recyclable in accordance with state law and to either add or delete them from any collection services provided by the local haulers.

(23) ENFORCEMENT AND PENALTIES.

(a) For the purpose of ascertaining compliance with the provisions of this ordinance, any authorized officer, employee or representative of the Town of Delavan may inspect recyclable materials separated for recycling, postconsumer waste intended for disposal, recycling collection sites and facilities, collection vehicles, collection areas of multiple-family dwellings and non-residential facilities and properties, and any records relating to recycling activities, which shall be kept confidential when necessary to protect proprietary information. No person may refuse access to any authorized officer, employee or authorized representative of the Town of Delavan who requests access for purposes of inspection, and who presents appropriate credentials. No person may obstruct, hamper, or interfere with such an inspection.

(b) Any person who violates a provision of this ordinance may be issued a citation by the Town of Delavan. The issuance of a citation shall not preclude proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this paragraph.

(c) Any person who shall violate this Section shall be subject to a penalty for each offense, as set forth in Sec. 25.04 of the Municipal Code of the Town of Delavan.

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Established April 17, 2001, Ordinance No. 229

**9.11 BURNING REGULATED.**

(1) PURPOSE. This section is intended to promote the health, safety and welfare and to safeguard the health, comfort, living conditions, safety and welfare of the Town of Delavan, Walworth County, Wisconsin, due to the air pollution and fire hazards of open burning, outdoor burning and refuse burning.

(2) APPLICABILITY. This section applies to all outdoor and refuse burning within the Town of Delavan, except:

(a) This section does not apply to grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances.

(b) This section does not apply to burning in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation unless the material being burned includes refuse as defined in section 9.04.

(c) This section does not apply to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.

(3) DEFINITIONS.

(a) "Campfire" or "bonfire" means an outdoor fire intended for recreation or cooking, not a fire intended for disposal of waste wood or refuse, not to exceed a 4' fire ring or fire pit, nor more than 2' high.

(b) "Clean wood" means natural wood which has not been painted, varnished or coated with a similar material, has not been pressure treated with preservatives and does not contain resins or glue as in plywood or other composite wood products.

(c) "Fire Chief" means the chief of the Town of Delavan Volunteer Fire Department or other person authorized by the Fire Chief to act in the Fire Chief's place.

(d) "Outdoor burning" means open burning or burning in an outdoor wood furnace.

(e) "Open burning" means setting or maintaining a fire where the products of combustion are emitted directly into the ambient air without passing through a stack or a chimney from an enclosed fire.

(f) "Outdoor wood furnace" means a wood-fired furnace, stove or boiler that is not located within a building intended for habitation by humans or domestic animals.

(g) "Refuse" means any waste material except clean wood.

(4) GENERAL PROHIBITION. Open burning, outdoor burning and refuse burning are prohibited in the Town of Delavan unless the burning is specifically permitted by this section.

(5) MATERIALS THAT MAY NOT BE BURNED. Unless specific written approval has been obtained from the Department of Natural Resources, the following materials may not be burned in an open fire, incinerator, burn barrel, furnace, stove, or any other indoor or outdoor incineration or heating device.

(a) Rubbish or garbage including but not limited to food wastes, food wraps, food packaging, animal carcasses, paint or painted materials, furniture, composite shingles, construction or demolition debris or other household or business wastes.

(b) Waste oil or other oily waste except used oil burned in a heating device for energy recovery, subject to the restrictions in Ch. N.R. 590, Wisconsin Administrative Code.

(c) Asphalt and products containing asphalt.

(d) Treated or painted wood including, but not limited to plywood, composite wood products or other wood products that are painted, varnished or treated with preservatives.

(e) Any plastic material including, but not limited to nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, films and containers.

(f) Rubber, including tires and synthetic, rubber-like products.

(g) Newspaper, corrugated cardboard, container board, office paper and other materials that must be recycled in accordance with the Town of Delavan recycling ordinance, except as provided or otherwise allowed herein.

(6) OPEN BURNING. Open burning of leaves, weeds, brush, stumps, clean wood and other vegetative debris is prohibited except in accordance with the following provisions:

(a) All allowed open burning shall be conducted in a safe manner, when wind and weather conditions are such as to minimize adverse effects and not create a health hazard or a visibility hazard on roadways, railroads or airfields.

(b) Open burning shall be conducted in conformance with all local and state fire protection regulations.

(c) Except for barbecue, gas and charcoal grills, no open burning shall be undertaken during periods when the Fire Chief or the Wisconsin Department of Natural Resources has issued a burning ban applicable to the area.

(d) Open burning of weeds or brush on agricultural lands is allowed if conducted in accordance with other applicable provisions of this ordinance.

(e) Fires set for forest or wildlife habitat management are allowed with the approval of the Department of Natural Resources.

(f) Outdoor campfires and small bonfires for cooking, ceremonies or recreation are allowed provided that the fire is confined by a control device or structure such as a fire ring or fire pit.

(g) Burning of trees, limbs, stumps, brush or weeds for clearing or maintenance of rights-of-way is allowed if approved by the Fire Chief and if in accordance with other provisions of this section.

(h) Burning in emergency situations such as natural disasters is allowed if approved by the Department of Natural Resources.

(i) Except for campfires, open burning under this section shall only be conducted at a location at least 50' from the nearest building that is owned by a person other than the person maintaining the fire or by the owner of the real property on which the fire is burning.

(j) Except for campfires and permitted bonfires, open burning shall only be conducted from the hours of 10 a.m. until 10 p.m., from September 15 through June 15.

(k) Open burning shall be constantly attended and supervised by a competent person of at least eighteen years of age until the fire is extinguished and is cold. The person shall have readily available for use such fire extinguishing equipment as may be necessary to extinguish the fire.

(l) No materials may be burned upon any street, curb, gutter or sidewalk, ditch or on the ice of any lake, pond or stream located in the Town of Delavan.

(m) There shall be no burning within 100 feet of a body of water or lake.

(n) Burning is not allowed within 25 feet of any building.

(o) Grills for cooking are not allowed on any patios above the ground floor, except that electric grills may be so used.

(p) Except for barbecue, gas and charcoal grills, no burning shall be undertaken within 25 feet from any combustible material, combustible wall or partition, exterior window opening, exit access or exit unless authorized by the Fire Chief.

(7) BURN BARRELS. A burn barrel may be used in the Town of Delavan only in accordance with the following:

(a) Only branches and small amounts of yard debris may be burned in a burn barrel.

(b) The burn barrel shall not be used to burn any of the prohibited materials listed in subsection (5) of this section and may only be used in accordance with subsection (6) of this section.

(c) The burn barrel shall be at least 50 feet from the nearest building that is not on the same owner's property as the burn barrel.

(d) The burn barrel shall have vent holes above the ash line for combustion air.

(e) The burn barrel shall not serve a business.

(f) Use of burn barrels shall be permitted year-round.

(8) OUTDOOR FURNACES. An outdoor furnace may be used in the Town of Delavan only in accordance with the following:

(a) The outdoor wood furnace shall not be used to burn any of the prohibited materials listed in subsection (5) of this section.

(b) The outdoor furnace shall be located at least 300 feet from the nearest building which is not on the same property as the outdoor wood furnace.

(c) The outdoor furnace shall have a chimney that extends at least 20 feet above the ground surface. The Fire Chief may approve a lesser height on a case-by-case basis if necessary to comply with manufacturer recommendations and if the smoke from the lower chimney height does not create a nuisance.

(d) The owner must pay an inspection fee to the Town and obtain a permit from the Fire Chief before installing an outdoor wood furnace. The inspection fee shall be \$75.00 per inspection.

(9) FIRE DEPARTMENT PRACTICE BURNS. Except as provided in this section for fire department practice burns, an existing unwanted building in the Town of Delavan may not be burned. A building that is no longer standing shall not be used for a practice burn.

(a) An existing building may be burned only by the Town of Delavan Fire Department and only if the Fire Chief determines that the burning is necessary for practice and instruction of firefighters or testing of firefighting equipment.

(b) Asphalt shingles and asphalt or plastic siding shall be removed prior to the practice burn unless the Fire Chief determines that they are necessary for the fire practice burn.

(c) All other materials prohibited by (5) of this section shall be removed prior to the practice burn.

(d) A demolition notification shall be submitted to the Department of Natural Resources and all asbestos removed prior to the practice burn.

(e) All ash shall be disposed of in an approved landfill or at an alternative location approved by the Department of Natural Resources.

(f) The Fire Chief shall notify the fire committee before any practice burn takes place. The fire committee shall ensure that any practice burn complies with the requirements herein.

(10) EXEMPTION FOR BURNING CERTAIN PAPERS.

(a) Notwithstanding (5)(g) of this section, paper and cardboard products may be used as a starter fuel for a fire that is allowed under this section.

(b) Small quantities of confidential papers from a residence may be burned if necessary to prevent the theft of financial records, identification or other confidential information.

(c) Confidential papers from a commercial enterprise shall be shredded or destroyed in a manner other than burning.

(d) A fire set for burning a small quantity of confidential papers shall comply with the provisions herein.

(11) FIRE CHIEF AUTHORITY TO DECLARE OPEN BURNING MORATORIUM. The Fire Chief may declare a moratorium on open burning when the Fire Chief determines that it is warranted by burning conditions.

(12) LIABILITY. A person utilizing or maintaining an outdoor fire shall be responsible for all fire suppression costs and any other liability resulting from damage caused by the fire.

(13) RIGHT OF ENTRY AND INSPECTION. The Fire Chief or any authorized officer of the Town of Delavan Fire Department who presents proper credentials may inspect any property for the purpose of ascertaining compliance with the provisions of this section.

(14) ENFORCEMENT AND PENALTIES.

(a) The Fire Chief, the Town Chairman, or their designee, are authorized to enforce the provisions of this section.

The penalty for violation of any portion of this section shall be a forfeiture under section 25.04 of the Town of Delavan's municipal code plus the cost of prosecution. Penalties shall be doubled for second and subsequent offenses.

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Established April 17, 2001, Ordinance No. 229, amended December 19, 2006, Ordinance No. 282

**9.12 SALE AND CONSUMPTION OF INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES IN PUBLIC PLACES PROHIBITED WITHOUT PERMIT.**

(1) DEFINITIONS. For the purpose of this section, intoxicating liquor and fermented malt beverages shall be defined as defined in Sec. 125.02, Stats.

(2) OPEN INTOXICANTS AND FERMENTED MALT BEVERAGES. Except as allowed by license, permit or the Municipal Code of the Town of Delavan, no person shall have on or about his person, or anytime dispense, sell, open or consume upon or in any public street, parkway, square, sidewalk, stadium, park or beach area, municipal building, library building, shrine, vehicle or any drives or parking areas for business held out to the public in the Town of Delavan any open container which has in it any fermented malt beverage, intoxicating liquor or other intoxicant.

(3) EXCEPTION. The provisions of this section as to fermented malt beverages shall not apply to a public place during the period covered by a special permit issued by the Town Board, or such other person as the Town Board shall designate.

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Established April 17, 2001, Ordinance No. 229

**9.13 FALSE I.D. CARDS, USE OF PROHIBITED.**

(15) FALSE IDENTIFICATION. No person shall use any false identification card or certificate, or any other means of misrepresenting his or her age, for the purpose of gaining unlawful admission to any place where intoxicating liquors or fermented malt beverages are sold, or for the purpose of unlawfully asking for, or unlawfully receiving, any intoxicating liquors or fermented malt beverages.

(16) MISREPRESENTATION OF AGE. No person shall provide any other person with a false identification card or certificate, or any other means of misrepresenting age, which is to be used for any of the purposes prohibited in Sub. (1).

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Established April 17, 2001, Ordinance No. 229

#### 9.14 CURFEW.

- (17) CURFEW ESTABLISHED. No child under the age of 18 years shall loiter, idle or remain upon any street, alley or other public place in the Town between 11:00 p.m. and 4:00 a.m. Sunday evenings through Friday mornings and between 12:00 midnight and 4:00 a.m. Friday evenings through Sunday morning, unless such child is accompanied by his parent, guardian or other adult person having legal custody of such child.
- (18) EXCEPTIONS. The following exceptions shall not permit a child to unnecessarily loiter about the streets, alleys or public places or be in a parked motor vehicle on the public streets. This section shall not apply to a child:
- a. Who is performing an errand as directed by his parent, guardian or person having lawful custody.
  - b. Who is on his own premises or in the areas immediately adjacent thereto.
  - c. Whose employment makes it necessary to be upon the streets, alleys or public places or in any motor vehicle during such hours.
  - d. Who is returning home from a supervised school, church or civic function.
- (19) PARENTAL VIOLATION. No parent, guardian or other person having legal custody of a child under the age of 18 years shall permit such child to loiter, idle or remain upon any street, alley or other public place in the Town between the hours in Sub. (1) above unless such child is accompanied by his parent, guardian or other adult person having legal custody of such child.
- (20) RESPONSIBILITY OF OPERATORS OF PLACES OF AMUSEMENT. No person operating a place of amusement or entertainment within the Town or any agent, servant or employee of such person, shall permit a child under the age of 18 years to enter or loiter in such place of amusement or entertainment between the hours specified in Sub. (1) unless such child is accompanied by his parent, guardian or other adult person having legal custody of such child.

(21) RESPONSIBILITY OF OPERATORS OF HOTELS, MOTELS AND ROOMING HOUSES. No person operating a hotel, motel or lodging or rooming house within the Town, or any agent, servant or employee of such person, shall permit any child under the age of 18 years to visit, idle, wander or stroll in any portion of such hotel, motel or lodging or rooming house between the hours specified in Sub. (1) unless such child is accompanied by his parent, guardian or other adult person having legal custody of such child.

(22) DETAINING A CHILD. A child believed to be violating the provision of this section shall be taken to the Police Department or the County Sheriff's Department for proper identification. Any law enforcement officer on duty may detain any child violating Subs. (1), (3), (4) or (5) until such time as the parent, guardian or other adult person having legal custody of the child has been immediately notified and the person so notified has, as soon as reasonably possible thereafter, reported to the Police Department or the Sheriff's office for the purpose of taking the child into custody and has signed a release for said child.

(23) WARNING. The first time a child is detained by law enforcement officers as provided in Sub. (6), the parent, guardian or person having legal custody shall be advised as to the provisions of this section; and any violation of this section occurring thereafter by this child or any other child under such adult's care or custody shall result in a penalty being imposed as provided in Sub. (8).

(24) GENERAL PENALTY.

- a. Any parent, guardian or person having legal custody of a child described in Subs. (1), (3), (4) or (5) who has been warned in a manner provided in Sub. (7) and who thereafter violates any of the provisions of this section shall be subject to a penalty as provided in Sec. 25.04 of this Municipal Code.
- b. Any child who violates this section after being detained and released under Sub. (6) may be subject to the provisions of Chapters 48 and 938, Stats.

**9.15 MARIJUANA-POSSESSION PROHIBITED.** No person shall possess, keep or maintain 25 grams or less of marijuana, as defined in Section 961.01 (14), Wis. Stats., subject to the exceptions of Sec. 961.41 (3g) (intro), Wis. Stats. No person may receive a citation under this ordinance following a conviction for possession of marijuana.

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Established April 17, 2001, Ordinance No. 229

**9.155 Possession Manufacture, Delivery or Advertisement of Drug Paraphernalia Prohibited.**

(1) The Town of Delavan hereby adopts by reference Sections 961.571, 961.572, 961.573 (1) and (2), 961.574(1) and (2), 961.575(1) and (2), Wis. Stats., as if set forth fully herein, pursuant to Section 961.577, Stats. Maximum penalties shall be as provided therein, unless otherwise restricted pursuant to Sec. 25.04 of this Municipal Code.

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Adopted January 21, 2003, Ordinance No. 238; amended June 20, 2006, Ordinance No. 276

**9.16 PROHIBITED DISCHARGES.**

(1) PROHIBITED DISCHARGES. No person, firm or corporation shall discharge or cause to be discharged, leaked, leached or spilled upon any public street, alley, or public property, or onto the ground, surface waters, subsurface waters, or aquifers, or on any private property within the Town, except those areas specifically licensed for waste disposal or landfill activities and to receive such materials, any explosive, flammable or combustible solid liquid or gas, any radioactive material at or above Nuclear Regulatory Restriction levels, etiologic agents, or any solid, liquid or gas creating a hazard, potential hazard, or public nuisance or any solid, liquid or gas having a deleterious effect on the environment.

(2) CONTAINMENT, CLEANUP AND RESTORATION. Any person, firm, or corporation in violation of the above section shall, upon direction of any Emergency Government officer, begin immediate actions to contain, cleanup and remove to an approved repository the offending material(s) and restore the site to its original condition, with the offending person, firm or corporation being responsible for all expenses incurred. Should any person, firm or corporation fail to engage the necessary personnel and

equipment to comply or to complete the requirements of this section, the Office of Emergency Government may order the required actions to be taken by public or private resources and allow the recovery of any and all costs incurred by the Town of Delavan.

(3) SITE ACCESS. Access to any site, public or private, where a prohibited discharge is indicated or suspected will be provided to Emergency Government officers and staff and to Town Police and Fire Department personnel for the purpose of evaluating the threat to the public and monitoring containment, cleanup and restoration activities.

(4) PUBLIC PROTECTION. Should any prohibited discharge occur that threatens the life, safety or health of the public at, near, or around the site of a prohibited discharge, and that the situation is so critical that immediate steps must be taken to protect life and limb, the Coordinator of Emergency Government, his or her assistant, or the senior Town Police or Fire official on the scene of the emergency may order an evacuation of the area or take other appropriate protective steps for a period of time until the Town Board can take appropriate action.

(5) ENFORCEMENT. The Coordinator of Emergency Government and his or her deputies, as well as the Town Police officers, shall have authority to issue citations or complaints under this Section.

(6) CIVIL LIABILITY. Any person, firm or corporation in violation of this section shall be liable to the Town of Delavan for any expenses incurred by the Town or loss or damage sustained by the Town by reason of such violations.

(7) PENALTIES. Any person, firm, L.L.C., L.L.P., or corporation in violation of this section shall be subject to a penalty as set forth in Sec. 25.04 of this Municipal Code.

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Established April 17, 2001, Ordinance No. 229

### **9.17 LANDFILL SITES.**

(1) LANDFILL SITES PROHIBITED. No person, firm or corporation shall create or operate a landfill site or permit waste disposal or landfill activities on any property within the Town.

(2) CLEANUP AND RESTORATION. Any person, firm or corporation in violation of the above section shall, upon direction of the Town Board, immediately cease and desist conducting such activities and shall begin immediate actions to clean up and remove any offending materials and restore the site to its original condition, with the offending person, firm or corporation being responsible for all expenses incurred. Should any person, firm or corporation fail to engage the necessary personnel and equipment to comply or to complete the requirements of this section, the Town Board of the Town of Delavan may order the required actions to be taken by public or private resources and allow the recovery of any and all costs incurred by the Town.

(3) CIVIL LIABILITY. Any person, firm, or corporation in violation of this section shall be liable to the Town of Delavan for any expenses incurred by the Town for loss or damage sustained by the Town by reason of such violation.

(4) PENALTIES. Any person, firm, L.L.C., L.L.P. or corporation in violation of this section shall be subject to a penalty as set forth in Sec. 25.04 of this Municipal Code.

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Established April 17, 2001, Ordinance No. 229

**9.18 PENALTIES.** Any person who shall violate any provision of this Chapter shall be subject to a penalty as provided in Section 25.04 of this Municipal Code. In addition to any penalty imposed for violation of Section 9.943.01(1), any person who shall cause physical damage to or destroy any public property shall be liable for the costs of replacing or repairing such damaged or destroyed property. The parent or parents of any unemancipated minor child who violates Section 9.943.01(1) may also be held liable for the cost of replacing or repairing such damaged or destroyed property in accordance with Section 895.035, Wis. Stats. This provision shall not apply to a Section herein if the enabling state statute for this Chapter provides for a lower forfeiture.

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Established April 17, 2001, Ordinance No. 229