

CHAPTER 10

PUBLIC NUISANCES

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10.01 PUBLIC NUISANCES PROHIBITED.

No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the Town.

10.02 PUBLIC NUISANCE DEFINED.

A public nuisance is a thing, act, occupation, condition or use of property which continues for such length of time as to:

- (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
- (2) In any way render the public insecure in life or in the use of property.
- (3) Greatly offend the public morals or decency.
- (4) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property.

10.03 PUBLIC NUISANCES AFFECTING HEALTH.

The following acts, omissions, places, conditions and things are specifically declared to be public health nuisances; but such enumeration shall not be construed to exclude other health nuisances coming within the definition of §10.02:

- (1) ADULTERATED FOOD. All decayed, adulterated or unwholesome food or drink sold or offered for sale to the public.
- (2) UNBURIED CARCASSES. Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within 24 hrs. after death.
- (3) BREEDING PLACES FOR INSECTS OR VERMIN. Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material in which flies, mosquitoes, disease carrying insects, rats or other vermin can breed.
- (4) STAGNANT WATER. All stagnant water in which mosquitoes, flies or other insects can multiply.
- (5) PRIVY VAULTS AND GARBAGE CANS. Privy vaults and garbage cans which are not flytight.
- (6) NOXIOUS WEEDS.
 - (a) Noxious Weeds defined: The term "noxious weeds" as used in this section includes the following: Canada thistle, leafy spurge, field bindweed (creeping jenny), nodding thistle, burdock, purple loostrike, bull thistle and garlic mustard. These listed weeds are hereby declared to be noxious within the boundaries of the Town of Delafield.
 - (b) All noxious weeds and other rank growth of vegetation. All weeds and grass shall be kept cut to a height not to exceed 1'. The Town may cause all weeds and grass to be cut and removed and brush to be removed and the cost thereof charged to the property under §66.60(16), Wis. Stats.
- (7) WATER POLLUTION. The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage, creamery or industrial wastes or other substances.
- (8) NOXIOUS ODORS, ETC. Any use of property, substances or things within the Town emitting or causing any foul, offensive, noisome, noxious or disagreeable odors, gases, effluvia or stenches

extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the Town.

- (9) STREET POLLUTION. Any use of property which causes any noxious or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the Town.
- (10) AIR POLLUTION. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the Town or within one mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or threaten or cause substantial damage to property in the Town.

10.04 PUBLIC NUISANCES OFFENDING MORALS AND DECENCY.

The following acts, omissions, places, conditions and things are specifically declared to be public nuisances offending public morals and decency; but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of §10.02:

- (1) DISORDERLY HOUSES. All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or restored to for the purpose of prostitution, promiscuous sexual intercourse or gambling.
- (2) GAMBLING DEVICES. All gambling devices and slot machines.
- (3) UNLICENSED SALE OF LIQUOR AND BEER. All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided by the ordinances of the Town.
- (4) CONTINUOUS VIOLATION OF CITY ORDINANCES. Any place or premises within the Town where Town ordinances or State laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.
- (5) ILLEGAL DRINKING. Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of State laws.

10.05 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

The following acts, omissions, places, conditions and things are declared to be public nuisances affecting peace and safety; but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the definition of §10.02:

- (1) DANGEROUS SIGNS, BILLBOARDS, ETC. All signs, billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated or constructed as to endanger the public safety.
- (2) ILLEGAL BUILDINGS. All buildings erected, repaired or altered in violation of Town ordinances relating to materials and manner of construction of buildings and structures within the Town.
- (3) UNAUTHORIZED TRAFFIC SIGNS. All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing which purport to be or may be mistaken as official traffic control devices or railroad signs or signals or which, because of their color, location, brilliance or manner of operation, interfere with the effectiveness of any such device, sign or signal.
- (4) OBSTRUCTION OF INTERSECTIONS. All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.
- (5) LOW-HANGING TREE LIMBS. All limbs of trees which project over and less than 8' above any public sidewalk, street or other public place.

- (6) DANGEROUS TREES. All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.
- (7) FIREWORKS. All use or display of fireworks except as provided by State laws and Town ordinances.
- (8) DILAPIDATED BUILDINGS. All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human use.
- (9) LOW HANGING WIRES AND CABLES. All wires and cables over streets, alleys or public grounds which are strung less than 15' above the surface thereof.
- (10) NOISY ANIMALS OR FOWL. The keeping or harboring of any animal or fowl which, by frequent or habitual howling, yelping, barking, crowing or making of other noises, greatly annoys or disturbs a neighborhood or any considerable number of persons within the Town.
- (11) OBSTRUCTIONS OF STREETS; EXCAVATIONS. All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the ordinances of the Town but including those which, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished or which do not conform to the permit.
- (12) UNLAWFUL ASSEMBLIES. Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.
- (13) BLIGHTED BUILDINGS AND PREMISES. Premises existing within the Town which are blighted because of faulty design or construction, failure to maintain them in a proper state of repair, improper management or due to the accumulation thereon of junk or other unsightly debris, structurally unsound fences and other items which depreciate property values and jeopardize or are detrimental to the health, safety, morals or welfare of the people of the Town.
- (14) OFF-THE-ROAD VEHICLE VIOLATIONS. (repealed and recreated 2010-006) Use of an off-the-road vehicle, as defined in Section 7.12 of this code, in a manner which violates Section 7.12 of this code is hereby declared to be a public nuisance.

10.06 DUTCH ELM DISEASE

- (1) PUBLIC NUISANCE DECLARED. The Town Board, having determined that the health of the elm trees within the Town is threatened by a fatal disease known as Dutch elm disease, hereby declares the following to be public nuisances:
 - (a) Any living or standing elm tree or part thereof infected with Dutch elm disease fungus or which harbors any of the elm bark beetles *Scolytus multistriatus* (Eichh) or *Hylurgopinus rufipes* (Marsh).
 - (b) Any dead elm tree or part thereof, including logs, branches, firewood, stumps or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying insecticide.
- (2) TOWN FORESTER. The Highway Superintendent shall serve as Town Forester and shall have the powers and perform the duties imposed by this section and by Ch. 27, Wis. Stats.
- (3) DEFINITIONS. For the purposes of this section, the following phrases are defined as follows:
 - (a) Public Nuisance.
 1. Dutch elm disease.

2. Elm bark beetles Scolytus multistriatus (Eichh) or Hylurgopinus rufipes (Marsh).
 3. Any living or standing elm tree infected with Dutch elm disease fungus or in a weakened condition which harbors any of the elm bark beetles.
 4. Any dead elm tree or part thereof, including logs, branches, firewood, stumps or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying concentrate.
- (b) Public Property. Any premises owned or controlled by the Town, including but not restricted to public sites, parks, playgrounds, streets, alleys, sidewalks, boulevards and terrace strips between the lot line and the curb or improved portion of any public way.
- (4) INSPECTIONS.
- (a) The Town Forester shall inspect at least twice a year all premises and places within the Town to determine whether any public nuisance exists there on. He shall also inspect any elm tree reported or suspected to be infected with Dutch elm disease or any elm bark bearing material reported or suspected to be infested with elm bark beetles.
 - (b) Whenever necessary to determine the existence of Dutch elm disease or elm bark beetles in any tree, the Town Forest shall remove or cut specimens from the tree in such manner as to avoid permanent injury thereto and forward them to the State Department of Agriculture for analysis to determine the presence of such nuisances.
 - (c) The Forester and his agents or employees may enter upon private premises at reasonable times for the purpose of carrying out any of the provisions of this section.
- (5) ABATEMENT OF NUISANCES.
- (a) The Forester shall order, direct, supervise and control the abatement of public nuisances by spraying, removal, burning or other means which he determines to be necessary to prevent as fully as possible the spread of Dutch elm disease fungus or the insect pests or vectors known to carry such disease fungus.
 - (b) Whenever the Forester determines that a public nuisance exists on public property in the Town, he shall immediately abate or cause the abatement of such nuisance in such manner as to destroy or prevent as fully as possible the spread of Dutch elm disease or the insect pests or vectors known to carry such disease fungus.
 - (c) When the Forester determines with reasonable certainty that a public nuisance exists upon private premises, he shall immediately serve personally or by registered mail upon the owner of such property, if he can be found, or upon the occupant thereof, a written notice of the existence of such nuisance, directing that nuisance be abated within 10 days after service of such notice. Such notice shall describe the nuisance and recommend the procedure for its abatement and shall state that, unless the owner abates the nuisance as specified in the notice, the Forester will cause the abatement thereof at the expense of the property served. If the owner or occupant cannot be found, such notice shall be given by publication in a newspaper of general circulation in the Town.
- (6) SPRAYING.
- (a) Whenever the Forester determines that any elm tree or part thereof is infected with Dutch elm disease fungus or is in a weakened condition and harbors elm bark beetles, he may cause all elm trees within a 1,000' radius thereof to be sprayed with an effective elm bark beetle destroying concentrate.
 - (b) To facilitate the work and minimize the inconvenience to the public of any spraying operation

conducted under this section, the Forester shall cause to be given advance public notice of such operation by newspaper, radio, television public service announcements or other effective means and shall cause the posting of appropriate warning notices in the areas and along the streets where trees are to be sprayed at least 24 hrs. in advance of spraying. When any residue or concentrate from municipal spraying operations can be expected to be deposited on any public street, the Forester shall also notify the Constable, who shall make and enforce such temporary parking and traffic regulations on such streets as conditions require. Temporary "no parking" notices shall be posted in each affected block of any street at least 24 hrs. in advance of spraying operations.

- (c) If warning notices and temporary "no parking" notices have been given and posted in accordance with par. (b) above, the Town shall not allow any claim for damages to any vehicle caused by such spraying operations.
- (d) When trees on private property are to be sprayed, the Forester shall notify the owner of such property and proceed in accordance with sub. (5)(c).

(7) SPECIAL ASSESSMENTS FOR TREE CARE AND ABATEMENT.

- (a) The cost of abatement of a public nuisance or spraying elm trees or elm wood at the direction of the Forester, if the nuisance tree or wood is located in a public park or on other public grounds, shall be borne by the Town.
- (b) The cost of abating a public nuisance or spraying elm trees or elm wood located on private premises or in the public right-of-way, when done at the direction and under the supervision of the Forester, shall be assessed to the property on which such nuisance tree or wood is located or which abuts on the public right-of-way in which such nuisance tree or wood is located, as follows:
 - 1. The Forester shall keep account of the cost of such work or spraying and the amount chargeable to each lot or parcel and shall report such work charges, the description of lands to which they are chargeable and the names and addresses of the owners of such lands to the Town Clerk on or before October 15 of each year.
 - 2. The Town Clerk shall mail notice of the amount of such final assessment to each owner of property assessed at his last known address, stating that, unless paid within 30 days of the date of the notice, such assessment shall bear interest at the rate of current lawful rate per annum and will be entered on the tax roll as a delinquent tax against the property; and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such assessment.
 - 3. The Town hereby declares that, in making assessments under this section, it is acting under its police power. No damages shall be awarded to any owner for the destruction of any diseased or infested elm tree or elm wood or part thereof.

(8) PROHIBITED ACTS. No person shall:

- (a) Transport any bark bearing elm wood, elm bark or elm material on public streets or highways or other public premises without first securing the written permission of the Forester.
- (b) Interfere with or prevent any act of the Forester or his agents or employees while they are engaged in the performance of duties imposed by this section.
- (c) Refuse to permit the Forester or his duly authorized representative to enter upon his premises at reasonable times to exercise the duties imposed by this section.
- (d) Permit any public nuisance to remain on any premises owned or controlled by him when ordered by the Forester to abate such nuisance.

10.07 (Repealed in its entirety - 10/12/10)

10.08 SEWERAGE SLUDGE AND SEPTIC WASTES DISPOSAL.

(1) SCOPE AND INTENT. The intent of this section is to safeguard the public against the creation or perpetration of a public nuisance. It is the intent of the Town Board that the application of sludge and septic waste on property sites located in the Town be undertaken in accordance with the regulations and laws of Wisconsin, but not in such manner as might be offensive to the ordinary sensibilities of the Town residents.

(2) SEPTIC WASTE DISPOSAL.

- (a) Definition. As used in this section "septic waste" shall mean the accumulated residual solids generated by private septic systems, portable toilets, outdoor toilets or holding tanks of any type, including sanitary systems incorporated in recreation boats or vehicles.
- (b) Restrictions. No person shall apply septic waste or allow septic waste to be applied to any lands in the Town.
- (c) Disposal Facility. Septic waste may be disposed of at a wastewater treatment plant subject to requirements established by that facility. All costs incurred from such disposal shall be borne by the person disposing of such waste.

(3) SEWERAGE SLUDGE DISPOSAL.

- (a) Definitions. As used in this section:
 - 1. Sludge. The accumulated residual solids (usually in aqueous solution) resulting from the treatment of municipal waste waters.
 - 2. Site or Property Site. The property on which the applicant intends to apply sludge. Each real estate tax parcel as found on the tax rolls of the Town shall constitute a separate "site" or "property site."
 - 3. Applicant. The owner of the treatment facility generating the sludge.
- (b) Permit Required. No person shall apply sludge or allow sludge to be applied to lands under their ownership, lease, or control, within the corporate limits of the Town without first having obtained a permit from the Town Board. This shall apply to both existing and proposed sludge disposal operations.
- (c) Application. Written application for a permit to apply sludge on any land located within the Town shall be made to the Town Clerk. The application shall state:
 - 1. The applicant shall be the owner of the waste water treatment facility generating the sludge.
 - 2. The name and address of the applicant, and if the applicant is a corporation, the name, address, and registered agent of the corporation.
 - 3. The legal description of the site to be used.
 - 4. The name of the landowners and haulers involved with the disposal of the sludge. A copy of any contract between the landowners and applicant related to the sludge disposal shall be appended to the application.
 - 5. The name or names and address of the owners of any other site or sites on which the

applicant is presently applying sludge, whether or not such site or sites are within or without the corporate limits of the Town.

6. The name and post office address of all property owners whose property, or any portion thereof, are located within 1,000' of any boundary of the property site on which the applicant intends to dispose of the sludge.
 7. The volume, application rate and content of sludge that is proposed to be applied. In addition to the nutritional content of sludge, applicant will supply exact and detailed analysis of the sludge metal content.
 8. The length of time the applicant intends to apply sludge on the site or sites described in the application.
 9. Copies of all reports required by the Department of Natural Resources shall be submitted to the Town along with the application.
- (d) Term of Permit. A permit issued hereunder shall be for a period commencing on April 1 in the year of application and ending on November 30 in the year of application. Winter (December through March 31) sludge disposal will not be permitted.
- (e) Permit Fee. The applicant shall accompany his application with a nonrefundable annual permit fee in an amount as established by the Town Board from time to time.
- (f) Granting of Permit. The Town Clerk shall refer all applications for issuance of a permit hereunder to the Plan Commission for its recommendation. The Plan Commission will act within 10 days of its next regularly scheduled meeting. Upon receipt of the recommendation of the Plan Commission, the Town Board shall within 30 days schedule a public hearing on the application. Notice of the public hearing shall be sent by registered mail to all property owners whose property, or any portion thereof is located within 1000' of any boundary of the property site. At the conclusion of the public hearing, the Town Board may, if it finds that reasonable concern exists as to whether the application of sludge on the property site might tend to create a public nuisance, engage the services of an engineer, hydrologist, or other individual having recognized expertise in the areas of concern. The Town Board shall, however, in all instances, act on the application within 30 days of the conclusion of the public hearing. The Town Board shall issue a permit hereunder if, at the conclusion of the public hearing, and upon consideration of all other evidence presented to the Board, it finds that:
1. The injection of the sludge will be held at a 10" depth for the full recommended rate. A minimum depth of 6" will be allowed in severe hardpan or rocky soils, but the recommended rate of sludge will be reduced by 50%. Any sludge that surfaces in the injected furrows will be incorporated by disking within 24 hrs. of the application of that sludge.
 2. The sludge will be applied in accordance with the appropriate regulations of the Wisconsin Department of Natural Resources.
 3. The applicant has received approval from the Department of Natural Resources to apply such sludge to the property site described in the application.
 4. No sludge will be applied at a distance less than 500' from the nearest residence, unless the owners agree to a smaller distance. However, such distance shall in no case be reduced to less than 200'.
 5. No sludge will be applied at a distance less than 25' from any property line, road right-of-way, ditch or dry run.

6. The sludge will not be applied at a distance less than 1,000' from the nearest public or private water supply well unless the owner agrees to a lesser distance. However, such distance shall in no case be reduced to less than 200' and/or 1,000' from the nearest public supply well, and that the application of sludge is not likely to result in the contamination of a source for any water supply, irrespective of the location of the water supply.
 7. The sludge will not be applied a distance less than 500' from any lake, stream, pond, channelized waterway, or Wetland zoning.
 8. The sludge will not be applied to any soil which, because of its composition would tend to create a health hazard.
 9. The sludge will not be applied to any area with less than 3' of soil above bed rock or ground water levels.
 10. The application of sludge will only take place between 7 a.m. and 7 p.m. and will not be applied to any site Saturday, Sunday or holidays.
 11. Absolutely no Town roads will be used for transporting sludge without prior approval of the Town Board. Applicant must agree that all road damage or cleanups caused by applicant will be paid for by applicant and that monies can be taken from the bond if not paid within 30 days of billing.
 12. Before any action is taken, the applicant will provide soil tests as required by the Department of Natural Resources.
 13. The applicant has applied for and received all appropriate licenses from county and State licensing authorities.
- (g) Notification. At least 3 working days prior to sewerage sludge disposal, written notification must be made to the Town Board, N14 W30782 Golf Road, Delafield, Wisconsin, 53018. The notice will also include which roads will be used.
- (h) Recording. Within 30 days after sludge has been applied to a site, the owner shall record a statement with the Waukesha County Register of Deeds indicating that the volume, application rate and content of the sludge has been applied to the site, and the dates of the application, volume, rate of application and content are on file with the Town Clerk at the Town Hall.
- (i) Subsequent Development. Future development on lands upon which sludge has been applied will be subject to the parameters of the Residential Development Control system of the Town Regulating the Division and Platting of Land, Ch. 18 of this General Code.
- (j) Bond and Insurance. Upon approval of the application for the issuance of a permit hereunder, but prior to the issuance of the permit, the applicant shall provide the following bond, and a certificate of insurance:
1. Bond. The applicant shall file with the Town Clerk a surety bond in the amount to be determined from time to time by the Town Board, as a guarantee that the applicant will fully abide by the terms and conditions of this chapter, the ordinances of the Town, and any conditions, rules, or regulations imposed by the Town Board as a condition for the granting of the permit. The term of the bond shall be in effect for the term of the permit and one year thereafter. The bond should also guarantee the payment of any forfeitures imposed under this section.
 2. Insurance. The applicant shall file with the Town Clerk a certificate of insurance that the following minimum coverages are in effect:

- a. Standard worker's compensation policy, conforming to the requirements of the State.
 - b. Comprehensive general liability in a minimum amount to be set from time to time by the Town Board. Such policy shall contain an endorsement that it covers sludge disposal operations, and that the Town will be held harmless from any and all claims arising from acts or omissions of the applicant, his haulers, agents or employees, in the conduct of the sludge disposal operation.
- (k) Separate Violations. Each violation and each day a violation continues or occurs shall constitute a separate offense.

10.09 REGULATION OF HOLDING TANKS. (Repealed and Recreated #2010-003)

No person shall install, operate, repair, maintain or reconstruct any device designed for the holding of sewage wastes in the Town, unless a permit therefore has been obtained under the following conditions:

- (1) HOLDING TANKS PERMITTED. Holding tanks will be permitted to be installed, operated, repaired, maintained or reconstructed in the Town only in those instances described as follows:
 - (a) Residential. Residential holding tanks will be permitted only to replace an existing failing system. No new residential construction may be serviced by a holding tank.
 - (b) Commercial, Industrial and Institutional. Holding tanks will be permitted for the replacement of existing septic or sewage systems and for new construction of commercial and industrial projects.
- (2) AGREEMENT. An agreement is provided by the Town and on file with the Town Clerk shall be executed by the owner of the lands upon which the holding tank is located. Such agreement shall provide as follows:
 - (a) Owner shall agree with the Town to install a holding tank of adequate size for the use proposed as approved by the Town Engineer or Plumbing Inspector.
 - (b) Owner shall agree to conform to all rules and regulations, ordinances and codes of the Town as well as all regulations and statutes of the State or Waukesha County, both in the installation and the maintenance of such holding tank.
 - (c) Owner shall agree to submit to the Town a copy of a contract or agreement signed by a State licensed holding tank pumping firm, which contract will provide for the periodic pumping of such holding tank whenever necessary at owner's expense. Owner agrees that he will, whenever necessary, have such holding tank pumped out by a State licensed wastewater holding tank pumping firm and further agrees to maintain such holding tank in proper repair and order at his expense. Owner agrees that he will keep such hauling contract in full force and effect at all times and so long as such holding tank use is continued. Any change of haulers by owner shall require owner to immediately substitute new hauler's agreement for the old.
 - (d) Owner shall agree that at any time such holding tank is not pumped as necessary, the Town shall have the right on 24 hours written notice to hire or otherwise accomplish the emptying of such tank at the expense of the owner. The Town shall add to such cost 15% additional charge for the administration of this section. The total amount owed to the Town if such amount remains unpaid for 30 days shall be charged to the Owner as a special charge against the real estate of the owner pursuant to §66.0627, Wis. Stats., and may be collected as such according to the statute.
 - (e) Owner will agree in such agreement to grant to the Town full right, license and authority to enter upon his property for inspection, pumping and transportation from such holding tank.

- (f) As a further condition for the granting of such holding tank permit, owner agrees that he will pay all special assessments due if and when sanitary sewer becomes available and that he will grant all necessary easements for the installation of the same. The agreement signed by such owners shall constitute a waiver of all special assessment procedures and amounts. Owners further shall agree that they will connect up to such sanitary sewer within 60 days of the date the same becomes available. In addition, when public sewer is available, owners agree to properly abandon the holding tank and appurtenances as required by law and the Town Plumbing Inspector.
 - (g) Owner shall simultaneously with the agreement referred to herein deposit with the Town a cash bond in an amount as determined by the Board from time to time to guarantee to the Town reimbursement for any and all expenses occurring as a result of this holding tank. The cash bond shall at all times be maintained constantly at the amount originally deposited. Such bond shall be returned to owner upon proper connection to the public sewer or other approved disposal system and abandonment of such holding tank. Interest earned, if any, by such cash deposit shall be the property of the Town as an administrative charge by the Town for administering such cash bond.
 - (h) The agreement referred to herein shall be made a part of this section and shall be executed in recordable form, shall contain the legal description of the owner's property benefited and shall be recorded with the Register of Deeds for Waukesha County. All parties in interest to owner's property shall execute and be parties to the agreement. The owner shall bear expense of recording.
 - (i) The agreement shall continue so long as the holding tank is maintained and shall terminate upon connection to public sewer or other approved disposal system and abandonment of the holding tank.
 - (j) The agreement, upon execution by owner, shall thereupon become a part of this section and enforceable as a part of this section as if it were contained herein.
- (3) INSPECTION. In the event a violation ever occurs causing a nuisance, the Town may inspect such holding tank on a monthly basis to insure that future violations do not occur. The fee for these inspections shall be the responsibility of the owner and, in the event owner does not pay such inspection fees, the cost may then be added to the tax roll as a special real estate charge. The amount of the inspection fee shall be as determined from time to time by the Board.
- (4) PENALTIES. In addition to the financial obligations provided for in this section, if the owner violates or permits violation of any provision of this section or the holding tank agreement, such owner shall be liable to the Town for a penalty as provided for in §25.04 of this Municipal Code for each violation of which convicted. Each day that a violation occurs or continues shall be considered a separate violation of this section.
- (5) APPEALS.
- (a) Any person prohibited from installing a holding tank may petition the Town Board for reconsideration of the Town's denial and request a variance to the prohibition.
 - (b) The Town Board shall upon receipt of any such petition as soon as practical call a public hearing thereon. Notice of the time and place of the hearing shall be given pursuant to the open meeting law.
 - (c) As soon as possible after such public hearing, the Town Board shall act on such petition either granting, denying or conditionally granting the variance. In determining whether to grant, deny or conditionally grant the variance, the Town Board shall look to the standards as set forth in §ILHR 83.18(1) and (2), Wis. Adm. Code, and to the guidelines and past practice of Waukesha County.
 - (d) The Town shall inform the Department of Industry, Labor and Human Relations in writing of each variance.

10.10 LITTERING. (Cr. #91-390)

- (1) **PROHIBITED.** No person shall drop, deposit or throw glass, refuse or waste, filth or other litter upon the streets, alleys, highways, public parks or other property of the Town; upon any private property; or upon the surface of any body of water within the Town.
- (2) **RECYCLING.**
 - (a) The Town will provide receptacles for the following recyclable materials: clear glass, brown glass, green glass, tin/steel cans, aluminum cans, newspapers, used oil and any other materials designated, included or excluded from time to time by the Town Board.
 - (b) No person shall drop, deposit or throw glass, refuse or waste, filth or other litter around or near any recycling receptacles.
 - (c) No person shall deposit into a recycling receptacle any material other than that which the receptacle is designated to receive.

10.11 DESIGNATED SEX OFFENDERS REGULATED. (repealed and re-created 2013-08)

1. Findings and Intent.

- (a) This Chapter is a regulatory measure aimed at protecting the health and safety of children from the risk that convicted sex offenders may re-offend in locations close to their residences. The Governing Body finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders re-enter society, they are much more likely than any other type of offender to be re-arrested for a new sexual assault. The Governing Body further finds that, given the high rate of recidivism for sex offenders and that reducing opportunity and temptation is important to minimizing the risk of re-offense, there is a need to protect children where they congregate or play in public places in addition to the protections afforded by state law near schools, and other places children frequent. The Governing Body finds and recognizes that, in addition to schools, there are other areas where children congregate or play.
- (b) This Chapter is not intended to impose a criminal penalty or punishment of sexual offenders, but rather to serve the Town's compelling interest to promote, protect, and improve the health, safety, and welfare of children in the Town by creating areas around locations where children regularly congregate in concentrated numbers where sexual offenders and sexual predators are prohibited from loitering and/or establishing temporary or permanent residence and by regulating certain activities that may be used by sexual offenders to prey upon children.
- (c) Due to the high rate of recidivism for sexual offenders, and because reducing both opportunity and temptation would help minimize the risk of re-offense, the Governing Body finds that there is a compelling need to protect children where they congregate or play in public places.

2. Definitions.

For purposes of this Chapter, the following terms shall have the following meaning unless the context otherwise requires:

- (a) Child means a person under the age of 18.
- (b) Children means two or more persons under the age of 18.
- (c) Child Safety Location means the site upon which any of the following are located without regard to whether such site is located within the geographic limits of the Town of Delafield:
 1. Facility for children;
 2. Group home, as defined in Wis. Stat. sec. 48.02(7);
 3. Library, that is held open for use by the public;

4. Licensed day care center as defined in Wis. Stat. sec. 48.65;
 5. Public or private primary, elementary, secondary, middle, junior high, or high school;
 6. Recreational trail, playground or park;
 7. Specialized school for children, including, without limitation, a gymnastics academy, dance academy, or music school; the Schoenstatt Retreat Center is a specialized school;
 8. Swimming pool, wading pool, or aquatic facility held open for use by the public;
 9. A public or private golf course or range;
 10. Church or places of worship;
 11. Movie theater; and
 12. Delafield Town Hall.
- (d) Child Safety Zone means any place within the Town that is physically located within two thousand feet (2,000') of any Child Safety Location.
- (e) Crime Against Children means any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or the federal government, having like elements necessary for conviction where the victim is a child, respectively:
- § 940.225(1), First degree sexual assault;
 - § 940.225(2), Second degree sexual assault;
 - § 940.225(3), Third degree sexual assault;
 - § 940.22(2), Sexual exploitation by therapist;
 - § 940.30, False imprisonment - victim was minor and not the offender's child;
 - § 940.31, Kidnapping - victim was minor and not the offender's child;
 - § 944.01, Rape (prior statute);
 - § 944.06, Incest;
 - § 944.10, Sexual intercourse with a child (prior statute);
 - § 944.11, Indecent behavior with a child (prior statute);
 - § 944.12, Enticing child for immoral purposes (prior statute);
 - § 948.02(1), First degree sexual assault of a child;
 - § 948.02(2), Second degree sexual assault of a child;
 - § 948.025, Engaging in repeated acts of sexual assault of the same child;
 - § 948.05, Sexual exploitation of a child;
 - § 948.055, Causing a child to view or listen to sexual activity;
 - § 948.06, Incest with a child;
 - § 948.07, Child enticement;
 - § 948.075, Use of a computer to facilitate a child sex crime;
 - § 948.08, Soliciting a child for prostitution;
 - § 948.095, Sexual assault of a student by school instructional staff;
 - § 948.11(2)(a) or (am), Exposing child to harmful material-felony sections;
 - § 948.12, Possession of child pornography;
 - § 948.13, Convicted child sex offender working with children;
 - § 948.30, Abduction of another's child;
 - § 971.17, Not guilty by reason of mental disease - of an included offense;
 - § 975.06, Sex Crimes Law, commitment.
- (f) Domicile means an individual's fixed and permanent home where the individual intends to remain permanently and indefinitely and to which whenever absent the individual intends to return provided, however, that no individual may have more than one domicile at any time. Domicile does not include a residence for any special or temporary purpose.
- (g) Facility for children means a public or private school, a group home, as defined in Section 48.02(7), Wisconsin Statutes, a residential care center for children and youth, as defined in Section 48.02(15d), Wisconsin Statutes, a shelter care facility, as defined in Section 48.02(17), Wisconsin Statutes, a daycare center licensed under Section 48.65, Wisconsin Statutes, a daycare program established under Section 120.13(14), Wisconsin Statutes, a daycare provider certified under Section 48.651, Wisconsin Statutes, or a youth center, as defined in Section

961.01(22), Wisconsin Statutes.

- (h) Minor means a person under the age of 17.
- (i) Park means any area held open for use by the public for active or passive leisure purposes including, but not limited to, any park, parkway, recreation or open space area, beach, playground, conservation area, lake access point or recreational trail. "Park" also means any private lake access point or private beach that owners of two or more lots or condominium units are entitled use, pursuant to a deed restriction, subdivision plat, condominium declaration, condominium plat, homeowner's association regulation or similar rights of common use.
- (j) Permanent Residence means a place where the person abides, lodges, or resides for 14 or more consecutive days.
- (k) Sex Offender means a person who has been convicted of, found delinquent of, or found not guilty by reason of disease or mental defect of a sexually violent offense and/or a crime against children.
- (l) Sexually Violent Offense has the meaning set forth in Wis. Stat. sec. 980.01(6), as amended from time to time.
- (m) Temporary Residence means a place where the person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or non-consecutive days in any month and which is not the person's domicile.

3. **Residency Restrictions for Sex Offenders, Exceptions.**

- (a) Child Safety Zone Restriction. Subject to the exceptions in Section 3(c), no sex offender shall establish a permanent residence or temporary residence within the Town of Delafield that is within a Child Safety Zone, as determined by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer property line of any Child Safety Location.
- (b) Original Domicile Restriction. In addition to Section 3(a), but subject to the exceptions in Section 3(c), no sex offender, shall establish a permanent or temporary residence within the Town of Delafield and no supervised release of a sex offender shall be established in Town of Delafield unless such person was domiciled in the Town of Delafield at the time of the offense resulting in the person's most recent conviction for committing the sexually violent offense and/or crime against children.
- (c) Exceptions. A sex offender may not be found to be in violation of the residency restrictions in Section 3(a) if the sex offender establishes that any of the following apply:
 - 1. The person was domiciled in the Town of Delafield prior to January 11, 2011, provided, however, that if the person was then subject to Wis. Stat. Sec. 301.45, the person must have also reported and registered the residence pursuant to Wis. Stat. Sec. 301.45 prior to such date to take advantage of the exception.
 - 2. The person is a minor and is not required to register under Wis. Stats. Sec. 301.45 and Sec. 301.46.
 - 3. The Child Safety Location began after the sex offender had established the permanent residence or temporary residence and reported and registered the residence if required pursuant to Wis. Stat. Sec. 301.45.
 - 4. The sex offender is subject to an active court order to serve a sentence or is otherwise involuntarily required to reside in a jail, prison, juvenile facility, or other correctional institution or mental facility within the Child Safety Zone.

4. **Renting Real Property to Sex Offenders, Restricted.**

No person shall let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by a sex offender contrary to the provisions of Section (3) of this Ordinance.

5. Prohibited Activities by Sex Offenders, Exception.

- (a) Prohibited Activities by Sex Offenders. Except as provided in subsection 5(b), no sex offender shall participate in a holiday event in the Town of Delafield involving one or more child by means of distributing candy or other items to such child or children in relationship to Halloween, wearing a Santa Claus costume in a public place in relationship to Christmas, or wearing an Easter Bunny costume in a public place in relationship to Easter, or other similar activities that may, under the circumstances then present, tend to entice a child to have contact with a sex offender.
- (b) Exception. Events in which the sex offender is a parent or legal guardian of the child or children involved are exempt from the provisions of Section (5)(a) of this Ordinance provided that no child or children other than a child or children of the sex offender are present at the event.

6. Loitering by Sex Offender Prohibited, Exception.

- (a) Loitering by Sex Offender. No sex offender shall loiter or prowl on or within 200 feet of any Child Safety Location, at a time, or a manner not usual for law abiding individuals, under circumstances that warrant alarm for the safety of the 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 actor takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself or manifestly endeavors to conceal himself or herself or any object. Unless flight by the actor or other circumstances makes it impractical, a law enforcement officer shall prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him or her to identify himself or herself or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true, and, if believed by the law enforcement officer at the time, would have dispelled the alarm.
- (b) Exception. The prohibitions set forth in section 6(a) of this Ordinance shall not apply where the sex offender is a minor who is with one or both of his or her parents or guardian at the time of the offense or the actor was exercising First Amendment rights protected by the United States Constitution, including freedom of speech, free exercise of religion and the right of assembly.

7. Child Safety Zone Map.

The Town Clerk's Office shall maintain an official map showing Child Safety Zones within the Town. The Town Clerk's Office shall update the map at least annually to reflect any changes in the location of Child Safety Zones. The map is to be displayed in the office of the Delafield Town Clerk. In the event of a conflict, the terms of this Ordinance shall control. In no event shall a failure to update the map in compliance with this Ordinance preclude the prosecution or conviction of any sex offender under this Ordinance.

8. Penalties.

- (a) Any violation of this ordinance shall be subject to the penalties and remedies as set forth in Section 25.04 of this Code. Each day of violation shall constitute a separate offense.
- (b) In addition and not to the exclusion or prejudice of such other penalties and remedies as may apply, violation of Section 3 or Section 4 of this Ordinance shall also constitute a public nuisance, which the Town may enforce by action or proceeding to enjoin or abate such public nuisance.

10.15 ABATEMENT OF PUBLIC NUISANCES. (Ren. MSC `92)

(1) ENFORCEMENT. The Constable, Fire Chief, Building Inspector and the Highway Superintendent shall enforce those provisions of this chapter that come within the jurisdiction of their offices; and they shall make periodic inspections and inspections upon complaint to insure that such provisions are not violated. No action shall be taken under this section to abate a public nuisance unless the officer has inspected or caused to be inspected the premises where the nuisance is alleged to exist and has satisfied himself that a nuisance does in fact exist.

(2) SUMMARY ABATEMENT. If the inspecting officer determines that a public nuisance exists within the Town and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Chairman may direct the proper officer to cause the same to be abated and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.

(3) ABATEMENT AFTER NOTICE. If the inspecting officer determines that a public nuisance exists on private premises but that such nuisance does not threaten great and immediate danger to the public health, safety, peace, morals or decency, he shall serve notice on the person causing or maintaining the nuisance to remove the same within 10 days. If such nuisance is not removed within 10 days, the proper officer shall cause the nuisance to be removed as provided in sub. (2).

(4) OTHER METHODS NOT EXCLUDED. Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the Town or its officials in accordance with the laws of the State.

(5) COURT ORDER. Except when necessary under sub. (2), an officer hereunder shall not use force to obtain access to private property to abate a public nuisance but shall request permission to enter upon private property if such premises are occupied and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.

10.16 COST OF ABATEMENT. (Ren. MSC `92)

In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Town shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance; and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

10.17 PENALTY. (Ren. MSC `92)

In addition to other penalties provided in this chapter, any person who shall violate any provision of this chapter, or any regulation, rule or order made hereunder, or permit or cause a public nuisance, may be subject to a penalty as provided in §25.04 of this General Code.