

## CHAPTER 11

### PUBLIC HEALTH AND WELFARE

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11.01 ADMINISTRATION OF HEALTH AND SANITATION LAWS AND REGULATIONS. (1) DUTIES. The Village Board shall assume the

general administration of health and sanitation laws and regulations in the Village, supervise the work of the Health Officer and attend to the administration and enforcement of the health laws of the State and the rules and regulations prescribed by the State Department of Health and the ordinances of the Village. [Ord. 616 08/2011]

(2) POWERS. The Board shall take such measures and make such rules and regulations as shall be necessary and effectual for the preservation and promotion of the public health in the Village. [Ord. 616 08/2011]

(3) Health Officer. Where the Village President or Village Board has not specifically designated or appointed a Health Officer, the Village President, and in his absence, the Chief of Police, shall serve as Health Officer. The Health Officer may rely upon directives and recommendations of the Pierce County Department of Public Health, and shall also assist in the enforcement of any Orders issued by such Department where such Department has jurisdiction in the Village. [Ord. 616 08/2011]

11.02 HEALTH OFFICER: DUTIES AND POWERS. (1) GENERAL DUTIES. The Health Officer under the supervision of the District State Health Officer shall:

- (a) Maintain continuous sanitary supervision over his territory.
- (b) Promote the spread of information as to the causes, nature and prevention of prevalent diseases and the preservation and improvement of health.
- (c) Enforce the health laws, rules and regulations of the State Department of Health and Social Services, the State and Village including the laws relating to contagious diseases contained in Ch. 143, Wis. Stats.
- (d) Take steps necessary to secure prompt and full reports by physicians of communicable diseases and prompt and full registration of births and deaths.
- (e) Keep and deliver to his successor a record of

all his official acts.

- (f) Make an annual report to the State Department of Health and Social Services and to the Village Board and such other report as they may request.

(2) **MATERIALS AND SUPPLIES.** The Health Officer may procure at the expense of the Village all record books, quarantine cards and other material needed, except such as are furnished by the State Department of Health and Social Services. [Ord. 616 08/2011]

(3) **SALARY.** The health officer shall be paid such fees for inspection as are from time to time established by resolution of the Village Board. [Ord. 521 5/02]

11.04 **HEALTH NUISANCES, ABATEMENT OF.** The Health Officer may abate health nuisances in accordance with Sec. 66.0413, 254.595 & Chpt. 823, Wis. Stats., which is adopted by reference and made a part of this chapter as if fully set forth herein. [Ord. 523 8/02, Ord. 616 08/2011]

11.05 **COMMUNICABLE DISEASES.** Chpt. 252, Wis. Stats., and Ch. HFS 145.01-145.07, Wis. Adm. Code, are adopted by reference and made a part of this chapter and the Health Officer shall enforce the provisions thereof. [Ord. 523 8/02]

11.06 **REGULATION OF NUISANCE-TYPE BUSINESSES.** (1) **PERMIT REQUIRED.** No person shall conduct within the Village any business which has a tendency to create a public nuisance, except upon permit issued by the Health Officer and subject to such conditions as he may impose.

(2) **DEFINITION.** A business which has a tendency to create a public nuisance is one which unless properly regulated may create conditions creating a public nuisance as defined in sec. 10.02 of this Code.

11.07 **COMPULSORY CONNECTION TO SEWER AND WATER.** (1) All buildings or structures (including mobile homes) used for human habitation and located adjacent to sewer or water main, or in a block through which one or both of these systems extend, shall be connected with such sewer and water main as required by the Health Officer, and in any event shall be so connected as follows

- (a) New building construction: within one year of the date of such construction. Pre-existing buildings or structures: within one year of the date such sewer or water system is completed, as determined and certified by the project engineer or Director of Public Works. [Ord. 610 03/2011]
- (b) Building or structures not hooked up as of the effective date of this ordinance shall, where such systems are available, be connected within one year after the date of publication of this ordinance.

Notwithstanding the foregoing, any building currently served by private well water may continue to be so served provided that, in the event the Village Board or Health Officer determine such well is contaminated or otherwise poses a health hazard, such building shall be connected to water main within the time period set forth in subs. (2).

(2) The Village Clerk shall cause written notice to be served upon any person required to connect to sewer or water main specifying the time within which such connection is to be made. The time specified in the notice shall not be less than ten days. If any person fails to comply with this section after such notice the Village may cause such connections to be made and the expense thereof shall be assessed as a special tax against the property of the person failing to comply, in accordance with Sec. 281.45, Wis. Stats. [Ord. 523 8/02]

(3) Any person who desires to install a private sewage or well system within the Village limits, including septic system and holding tanks, shall first make application to and obtain approval in writing from the Village Board. The application shall be made in accordance with Section 11.073(4) [Ord. 246, 342, 628 11/12]

(4) Penalty. Any person, firm or other well owner violating any provisions of this Section shall upon conviction be punished by a fine of not less than \$500.00 nor more than \$1000.00 together with the cost of prosecution. Each 24-hour period during which a violation exists shall be deemed and constitute a separate offense. [Ord. 342, 356, 358, 415, 421, 628 11/12]

11.071 WISCONSIN FUND INDIVIDUAL TANK REPLACEMENT OR REHABILITATION REGULATORY PROGRAM. (1) The Village of

Ellsworth shall promptly assist the Wisconsin Department of Natural Resources and Wisconsin Department of Health and Social Services, and faithfully discharge any duties owing thereto, in connection with the installation, operation and maintenance of septic tanks replaced or rehabilitated with funds from the Wisconsin Fund Point Source Grant Program.

(2) All new or rehabilitated systems shall first be issued proper permits from the Village Board or the Village of Ellsworth.

(3) All new or rehabilitated systems must be properly sited, designed and installed in accordance with State regulations, as well as those regulations which may be imposed by the Village Engineer or Health Officer.

(4) All new or rehabilitated systems must be maintained in accordance with such schedule and program of same as the Village Engineer or Health Officer shall require. All new or rehabilitated systems which require pumping shall be so pumped in accordance with the schedule for same imposed by the Village Engineer or Health Officer.

(5) The Village Engineer and Village Health Officer shall inspect and monitor the installation and operation of all new or rehabilitated systems.

(a) The Village Engineer and Village Health Officer shall make at least one visual inspection of the system during installation of same.

(b) After installation, the Village Engineer and Village Health Officer shall inspect the system at least once each year.

(6) The Village Engineer, Village Health Officer or Village Attorney shall be responsible for initiating any enforcement actions when replacement, rehabilitation or abatement is necessary pursuant to Sec. 145.245, Stats. [Ord. 523 8/02]

(7) The Village Clerk shall keep a central record keeping system for all funds received for use in new or rehabilitated systems from the Wisconsin Fund Point Source Grant Program. The Village Clerk shall also keep records of all inspections made of the subject systems.

(8) The owner of property subject to the maintenance program established by the Village Engineer or Health Officer under sec. 11.071 (4) shall be provided written notice of the maintenance program requirements at the time application is made for a Sanitary permit.

(a) The owner of the property subject to the maintenance program must return a certification form signed by himself and by a licensed plumber, a licensed septage hauler or a municipal or State official trained in on-site wastewater disposal systems, certifying that 1) the on-site wastewater disposal system is in proper operating condition, and 2) the septic tank is less than one-third full of sludge and scum. The certification form shall be provided by the Village Clerk. The certification must be made no later than two years after the installation of the system and every three years thereafter. Records shall be maintained by the Village Clerk showing that notification or maintenance requirements has been given to each applicant for a Sanitary permit. Such signed certification forms shall be kept on file in the office of the Village Clerk. [Ord.609 12/2010]

(9) The Village Clerk shall maintain a central record keeping system consisting of the following items: a copy of the State grant application, construction inspection and maintenance reports, accounting records and minutes of Village Board meetings concerning state grant funds for septic tanks. [Ord.25, 27, 260, 264, 443]

11.072 Title. (1) This Section shall be known, cited and referred to as the "Wellhead Protection Ordinance" (hereinafter referred to as "WHP Ordinance"). Amended to incorporate by reference: "Wellhead Protection Plan Amendment No. 1, Municipal Well #4," SEH No. ELLSW0502.00, July 2009. [Ord. 594 9/09]

(2) Purpose, Authority and Application.

(a) Residents in the Village of Ellsworth depend exclusively on groundwater for a safe drinking water supply. Certain land use practices and activities can seriously threaten or degrade groundwater quality. The purpose of this WHP Ordinance is to institute land use regulations and restrictions to protect the Village's

Municipal water supply and well fields, and to promote the health, safety and general welfare of the residents of the Village of Ellsworth.

- (b) Statutory authority of the Village to enact these regulations was established by the Wisconsin Legislature in ss. 62.23(7)(a) and (c), Wis. Stats. Under these statutes, the Village has the authority to enact this ordinance, effective in the incorporated areas of the Village, to encourage the protection of groundwater resources.
  - (c) The regulations specified in this WHP Ordinance shall apply within the Village's corporate limits.
- (3) Definitions.
- (a) Aquifer. "Aquifer" means a saturated, permeable, geologic formation that contains, and will yield, significant quantities of water.
  - (b) Existing facilities. "Existing facilities" means current facilities, practices and activities which may cause or threaten to cause environmental pollution within that portion of the Village's wellhead protection area that lies within the corporate limits of the Village. Existing facilities include but are not limited to the type listed in the Department of Natural Resources' form 3300-215, Public Water Supply Potential Contaminant Use Inventory Form which is incorporated herein as if fully set forth herein.
  - (c) Recharge Area. "Recharge area" means the land area which contributes water to a well by infiltration of water into the subsurface and movement with groundwater toward the well. This area extends beyond the corporate limits of the Village of Ellsworth.
  - (d) Groundwater Protection Overlay District. "Groundwater Protection Overlay District" means that portion of the recharge area for the Village wells that lies within the Village as shall be shown in the map entitled "Map of Groundwater Protection Overlay District" and

incorporated herein as if fully set forth.

- (e) Well Field. "Well field" means a piece of land used primarily for the purpose of supplying a location for construction of wells to supply a municipal water system.
- (4) Groundwater Protection Overlay District.
- (a) Separation Distances. The following minimum separation distances shall be maintained within the Groundwater Protection Overlay District.
    - (1) Fifty feet between a well and storm sewer main.
    - (2) Two hundred feet between a well and any sanitary sewer main, lift station or single family residential fuel oil tank. A lesser separation distance may be allowed for sanitary sewer mains where the sanitary sewer main is constructed of water main materials and joints and pressure tested in place to meet current American Waterworks Association (AWWA) C600 specifications. In no case may the separation distance between a well and sanitary sewer main be less than 50 feet. NOTE: Current AWWA C600 specifications are available for inspection at the office of the Wisconsin Department of Natural Resources, the Secretary of State's office and the office of the Revisor of Statutes.
    - (3) Four hundred feet between a well and a septic tank or soil adsorption unit receiving less than 8,000 gallons per day, a cemetery or a storm water drainage pond.
    - (4) Six hundred feet between a well and any gasoline or fuel oil storage tank installation that has received written approval from the Wisconsin Department of Commerce (hereafter Commerce) or its designated agent under s. Comm 10.10, Wis. Adm. Code.
    - (5) One thousand feet between a well and land application of municipal, commercial or industrial waste; industrial, commercial

or municipal waste water lagoons or storage structures; manure stacks or storage structures; and septic tanks or soil adsorption units receiving 8,000 gallons per day or more.

- (6) Twelve hundred feet between a well and any solid waste storage, transportation, transfer, incineration, air curtain destructor, processing, wood burning, one time disposal or small demolition facility; sanitary landfill; any property with residual groundwater contamination that exceeds ch. NR 140 enforcement standards that is shown on the Department of Natural Resources' geographic information system registry of closed remediation sites; coal storage area; salt or deicing material storage area; gasoline or fuel oil storage tanks that have not received written approval from Commerce or its designated agent under s. Comm 10.10, Wis. Adm. Code; bulk fuel storage facilities; and pesticide or fertilizer handling or storage facilities.

(b) Three Overlay District Zones. This District is hereby divided into Zone A, B, and C.

- (1) Zone A. Identified as the primary source of water for the municipal well aquifer and as the area most likely to transmit groundwater contamination to the municipal wells. Zone A is more restrictive than Zones B or C.
- (2) Permitted uses - Zone A. The following uses are permitted uses within the groundwater protection Zone A. Uses not listed shall be considered prohibited uses:
- a. Parks, provided there is no on-site waste disposal or fuel storage tank facilities associated with this use.
  - b. Playgrounds.
  - c. Wildlife areas.
  - d. Non-motorized trails, such as bike skiing, nature and fitness trails.
  - e. Residential, commercial and

industrial property, which is municipally sewerred, and free of flammable and combustibile liquid and underground storage tanks (USTs).

f. Fire Station

(3) Zone B. Identified as a secondary source of water for the municipal wells because of the large cone of depression and a greater time of travel. Zone B is less restrictive than Zone A, but more restrictive than Zone C.

(4) Permitted Uses - Zone B. The following uses are permitted uses within the groundwater protection Zone B. Uses not listed shall be considered prohibited uses:

- a. All uses listed as permitted uses in Zone A.
- b. Modified agricultural activities, including any crop free of pesticides and/or synthetic fertilizers.
- c. Above-ground petroleum product storage tanks less than 660 gallons. All new or replaced tanks shall be installed in compliance with ch. Comm 10, Wis. Adm. Code.
- d. Residential, commercial and industrial property which is municipally sewerred or has a state-approved sewer and septic system.

(5) Zone C. Identified as the Groundwater Protection Overlay District, excluding those areas within Zone A and Zone B.

(6) Permitted Uses - Zone C. All uses listed as permitted in Zone A and Zone B. Individuals and/or facilities may make a request to the Village Board to permit additional land uses in Zone C.

(7) Mapping. The location and boundaries of the zoning districts established by this Ordinance are set forth on the Village of

Ellsworth Extraterritorial Zone map adopted 07-12-04 which is incorporated herein and hereby made a part of this Ordinance. Said map, together with everything shown thereon and all amendments thereto, shall be as much a part of this Ordinance as though fully set forth and described herein.

(5) Review of Permit Application.

- (a) The Village Board shall review all requests for approval of permits for land uses in the Groundwater Protection Overlay District. All determinations shall be made by the Village Board within sixty (60) days of any request for approval, provided however, that this sixty (60) day period of limitation may be extended by the Village Board for "good cause", as determined in the sole and absolute discretion of the Village Board.
- (b) Upon reviewing all requests for approval, the Village of Ellsworth Village Board shall consider all of the following factors:
  - (1) The Village's responsibility, as a public water supplier, to protect and preserve the health, safety and welfare of its citizens.
  - (2) The degree to which the proposed land use practice, activity or facility may seriously threaten or degrade groundwater quality in the Village of Ellsworth or the Village's recharge area.
  - (3) The economic hardship which may be faced by the landowner if the application is denied.
  - (4) The availability of alternative options to the applicant, and the cost, effect and extent of availability of such alternative options. (5) The proximity of the applicant's property to other potential sources of contamination.
  - (6) The then existing condition of the Village's groundwater public water wells

and well fields, and the vulnerability to further contamination.

- (7) The direction of flow of groundwater and other factors in the area of the applicant's property which may affect the speed of the groundwater flow, including topography, depth of soil, extent of aquifer, depth to water table and location of private wells.
  - (8) Any other hydro geological data or information which is available from any public or private agency or organization.
  - (9) The potential benefit, both economic and social, from the approval of the applicant's request for a permit.
- (c) Any exemptions granted will be made conditional and may include environmental and/or safety monitoring which indicates whether the facility may be emitting any releases or harmful contaminants to the surrounding environment. The facility will be held financially responsible for all environmental cleanup costs. The Village Board may require that a bond be posted for future monitoring and cleanup costs if deemed necessary at the time of granting an exemption.
- (d) The applicant shall be solely and exclusively responsible for any and all costs associated with the application, including all of the following:
- (1) The cost of an environmental impact study if so required by the Village of Ellsworth or its designee.
  - (2) The cost of groundwater monitoring or groundwater wells if required by the Village of Ellsworth or its designee. (3) The costs of an appraisal for the property or other property evaluation expense if required by the Village of Ellsworth or its designee.
  - (4) The costs of the Village's employee's or designee's time associated in any way with

the application based on the hourly rate paid to the employee multiplied by a factor, determined by the Village, representing the Village's costs for expenses, benefits, insurance, sick leave, holidays, overtime, vacation and other similar benefits.

- (5) The cost of Village equipment employed.
- (6) The cost of mileage reimbursed to the Village employees.

(6) Requirements for Existing Facilities and Land Uses.

- (a) Existing facilities shall provide copies of all Federal, State and local facility operation approvals or certificates and ongoing environmental monitoring results to the Village of Ellsworth.
- (b) Existing facilities shall provide additional environmental or safety monitoring as deemed necessary by the Village Board, specifically including the production of any and all environmental statements detailing the extent of chemical use and storage on the property.
- (c) Existing facilities shall replace equipment or expand in a manner that improves the existing environmental and safety technologies already in existence.
- (d) Existing facilities shall have the responsibility of devising and/or filing with the Village of Ellsworth, a contingency plan satisfactory to the Village Board for the immediate notification of the appropriate Village of Ellsworth officers in the event of an emergency.
- (e) Property owners with an existing agricultural use shall be exempt from requirements of this Ordinance as they relate to restrictions on agricultural uses, provided however, that such exemption shall only apply to the property owners in existence at the time of passage of the Ordinance and this exemption shall not constitute a covenant running with the land.

(7) Enforcement and penalties.

- (a) In the event an individual and/or facility causes the release of any contaminants which endanger the Groundwater Protection Overlay District, the individual/facility causing said release shall immediately cease and desist, and provide clean-up satisfactory to the Village of Ellsworth.
- (b) The individual/facility shall be responsible for all costs of cleanup and the Village of Ellsworth consultant fees at the invoice amount plus administrative costs for oversight, review and documentation, including all of the following:
  - (1) The cost of Village employees' time associated in any way with the clean-up based on the hourly rate paid to the employee multiplied by a factor determined by the Village, representing the Village's cost for expenses, benefits, insurance, sick leave, holidays, overtime, vacation, and similar benefits.
  - (2) The cost of Village equipment employed.
  - (3) The cost of mileage reimbursed to the Village employees attributed to the clean-up.
- (c) Following any such discharge, the Village may require additional test monitoring or other requirements as outlined in Section 6 and 7 herein.
- (d) Violations: It shall be unlawful to construct or use any structure, land or water in violation of this Ordinance. Any person who is specifically damaged by such violations may institute appropriate action or proceeding to enjoin a violation of this Ordinance.
- (e) Penalties. Any person, firm or corporation who fails to comply with the provisions of this Ordinance shall, upon conviction thereof, forfeit not less than One Hundred and 00/100 Dollars (\$100.00) nor more than Five Hundred

and 00/100 Dollars (\$500.00) plus the costs of the prosecution for each violation or in the alternative, shall have such costs added to their real estate property tax bill as a lien against the property. Each day a violation exists or continues shall constitute a separate offense.

(8) Severability Clause. If any section, subsection, sentence, clause paragraph or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or other applicable administrative or governing body, such decision shall not effect the validity of any other section, subsection, sentence, clause, paragraph or phrase or portion thereof. The Village Board of the Village of Ellsworth hereby declares that they would have passed this Ordinance and each section, subsection, sentence, clause, paragraph or phrase thereof irrespective of the fact that any one or more other sections, subsections, sentences, clauses, paragraphs, or phrases may be declared invalid or unconstitutional.

(9) All provisions in this Code of Ordinances in conflict with the foregoing are hereby repealed or amended to read and be consistent with this Ordinance. [Ord. 544 03/05; also see Wellhead Protection Plan 11/01/04, Ord. 594 09/09]

11.073 WELL ABANDONMENT AND WELL OPERATION PERMIT (1) Purpose. the purpose of this Section is to protect public health, safety and welfare and to prevent contamination of groundwater by assuring that unused, unsafe or non-complying wells or wells which may act as conduits for contamination of groundwater or wells which may be illegally cross-connected to the municipal water system, are properly maintained or abandoned.

(2) Applicability. This Section applies to all wells located on premises served by the Village of Ellsworth municipal water system. Utility customers outside the jurisdiction of the municipal system may be required under contract agreement or utility rule to adopt and enforce equivalent ordinances within their jurisdictions for purposes stated in (1) above.

(3) Definitions.

- A. "Municipal water systems" means a community water system owned by a city, village, county, town, town sanitary district, utility district, public inland lake and rehabilitation district, municipal water district or federal, state,

county, or municipal owned institution for congregate care or correction, or a privately owned water utility serving the foregoing.

- B. "Non-complying" means a well or pump installation which does not comply with S. NR 812.42, Wisconsin Administrative Code, Standards for Existing Installations, and which has not been granted a variance pursuant to S. NR 812.43, Wisconsin Administrative Code.
- C. "Pump Installation" means the pump and related equipment used for withdrawing water from a well, including the discharge piping, the underground connections, pit less adapters, pressure tanks, pits, sampling faucets and well seals or caps.
- D. "Unsafe" well or pump installation means one which produces water which is bacteriologically contaminated or contaminated with substances which exceed the drinking water standards of Chs. NR 140 or 809, Wisconsin Administrative Code, or for which a Health Advisory has been issued by the Department of Natural Resources.
- E. "Unused" well or pump installation means one which is not used for or does not have a functional pumping system.
- F. "Well" means a drill hole or other excavation or opening deeper than it is wide that extends more than 10 feet below the ground surface constructed for the purpose of obtaining groundwater.
- G. "Well abandonment" means the proper filling and sealing of a well according to the provisions of S. NR 812.26, Wisconsin Administrative Code.

(4) Abandonment Required. All wells on premises serve by the municipal water system shall be properly abandoned in accordance with sub. (6) of this Section no later than ninety days from the date of connection to the municipal water system, unless a valid well operation permit has been issued to the well owner by the Village of Ellsworth under terms of sub. (5) of this Section.

(5) Well Operation Permit.

1. Owners of wells on premises served by the municipal water system wishing to retain their wells for any use shall make application for a well operation permit for each well no later than 90 days after connection to the municipal water system. The Village of Ellsworth shall grant a permit to a well owner to operate a well for a period not to exceed 5 years providing all conditions of this Section are met. A well operation permit may be renewed by submitting an application verifying that the conditions of this Section are met. The Village of Ellsworth or its agent may conduct inspections and water quality tests or require inspections and water quality tests to be conducted at the applicant's expense to obtain or verify information necessary for consideration of a permit application or renewal. Permit applications and renewals shall be made on forms provided by the Clerk. All initial and renewal applications must be accompanied by a fee as is established from time-to-time by resolution of the Village Board.

2. The following conditions must be met for issuance or renewal of a well operation permit:

- A. The well and pump installation shall meet the Standards for Existing installations described in S. NR 812.42, Wisconsin Administration Code.
- B. The well and pump shall have a history of producing safe water evidenced by at least 1 coliform bacteria sample. In areas where the Department of Natural Resources has determined that ground water aquifers are contaminated with substances other than bacteria, additional chemical tests may be required to document the safety of the water.
- C. There shall be no cross-connections between the well's pump installation or distribution piping and the municipal water system.
- D. The water from the private well shall not discharge into a drain leading directly to

a public sewer utility unless properly metered and authorized by the sewer utility.

E. The private well shall have a functional pumping system.

F. The proposed use of the private well shall be justified as reasonable in addition to water provided by the municipal water system.

(6) Abandonment Procedures.

1. All wells abandoned under the jurisdiction of this Section shall be done according to the procedures and methods of S. NR 812.26, Wisconsin Administrative Code. All debris, pumps, piping, unsealed liners and other obstructions which may interfere with sealing operations shall be removed prior to abandonment.

2. The Owner of the well shall notify the Public Works Director and Village Clerk in writing at least 7 days in advance of any well abandonment activities. The abandonment of the well shall be observed or verified by personnel of the municipal system.

3. An abandonment report form, supplied by the Department of Natural Resources, shall be submitted by the well owner to the Clerk and the Department of Natural Resources within 30 days of the completion of the well abandonment.

(7) Penalties. Any well owner violating any provision of this Section shall upon conviction be subject to forfeiture of not less than \$500.00 nor more than \$1,000.00 together with the costs of prosecution. Each day of violation is a separate offense. If any person fails to comply with this Section for more than 30 days after receiving written notice of the violation, the Village may cause the well abandonment to be performed and the expense to be assessed as a special tax against the property. [Ord. 628 11/05]

11.08 MILK AND MILK PRODUCTS. (1) LICENSE REQUIRED. No person shall sell or distribute milk or any milk products to any retailer for resale for human consumption unless such person possesses a license issued hereunder. No license shall be required for retailers who sell milk or milk products furnished

by licensees in compliance with this section.

(2) **APPLICATION; LICENSEE.** Each application shall state the name and address of the person applying for a license and the location of each premises where milk or a milk product is bottled, pasteurized or otherwise prepared for distribution. A license shall be issued by the Village Clerk-Treasurer upon payment of an annual inspection and license fee as is established from time to time by resolution of the Village Board. [Ord. 475]

(3) **MILK PRODUCT DEFINED.** "Milk Product" shall include cream, homogenized milk, pasteurized milk, buttermilk, skim milk, milk beverages, skim milk beverages, milk or skim milk which has been fortified by the addition of vitamins or minerals.

(4) **STATE STANDARDS TO APPLY.** No person shall sell, offer for sale or expose to sale within the Village any milk or milk product other than "Grade A, Pasteurized" milk or milk product as defined in Chpt. ATCP 60, Wis. Adm. Code, or any milk or milk product which is adulterated or misbranded. [Ord. 523 8/02]

11.09 **KEEPING OF ANIMALS AND FOWL.** No person shall keep within the Village any animals or fowl, except domesticated pets, without permit issued by the Animal Warden/Humane Officer. In issuing a permit for animals or fowl, the Animal Warden/Humane Officer shall consider the number of such animals expected to be kept, the location, and the likelihood of a public or private nuisance being created. "Domesticated pets" include dogs, cats, mice, gerbils, hamsters, turtles, non-poisonous snakes and lizards. "Animals or fowl" refer to any exotic animals and animals associated with agriculture and farm husbandry including, but not limited to: cows, pigs, sheep, horses, goats, llamas, buffalo, ostriches, ducks, geese, chickens, doves. [Ord. 637 03/14, Ord. 660 03/17]

11.10 **SOLID WASTE AND RECYCLING.** (1) **DEFINITIONS.**  
(a) Unless specifically defined in this subsection, terms and abbreviations used in this chapter shall be interpreted in a manner consistent with the Wisconsin Statutes and the administrative regulations of the Department of Natural Resources which have been or hereafter may be adopted under those provisions.

- (1) "Agricultural waste" means vegetative residues or manures resulting from the raising of plants and animals for food, fiber and fuel. Agricultural waste does not include waste pesticides or herbicides or their containers, nor the organic

created from industrial operations such as food processing.

- (2) "Acceptable waste" means solid waste which can be processed by the Pierce County resource conservation facility and includes recyclables and compostables. Wastes not acceptable at the facility are those which may pose a threat to health or safety, cause damage to the facility or impair its operation, or that which is physically impossible to process at the facility. The solid waste management board may declare categories of waste as acceptable or unacceptable, and the facility manager is responsible for decisions as to the acceptability of any waste transported to the facility.
- (3) "Air contaminant" means the presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas or other gaseous fluid, or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere caused by the handling, storage, processing, or disposal of solid waste.
- (4) "Air pollution" means the presence in the outdoor atmosphere of any air contaminant or combination thereof in such quantity, or such nature and duration, under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property caused by the handling, storage, processing, or disposal of solid waste as defined in subsection 35.
- (5) "Bi-metal container" means a container that is made primarily of a combination of steel and aluminum.
- (6) "Canister site" means one or more commercial solid waste storage containers (such as "green boxes" and "dumpsters") located to function as intermediate solid waste facilities, and which are serviced on a regular basis by a public or private

solid waste hauler. A canister site shall not include primary or preliminary collection containers or dumpsters at the point of generation.

- (7) "Clean fill" means any material intended for fill purposes, including but not limited to: dirt, rock, broken clean concrete, trees and asphalt paving material, that is not contaminated with or composed of any environmentally harmful materials including but not limited to: concrete impregnated with petroleum products, demolition debris such as lumber and shingles, asbestos waste and treated wood.
- (8) "Clean fill disposal site" means a location for the disposal of clean fill.
- (9) "Commercial hauler" means any person, as defined in subsection 37, who owns, operates, or leases vehicles for hire for the purpose of collection and/or transportation of any type of solid waste. A commercial hauler does not include persons hauling processed recyclables to an end market.
- (10) "Commercial waste" means solid waste originating from commercial activities such as retail business, institutions, government office buildings and schools. Commercial waste shall not include agricultural waste or industrial waste.
- (11) "Composting" means the controlled biological decomposition of organic waste in a manner resulting in an innocuous final product.
- (12) "Container board" means corrugated paperboard used in the manufacture of shipping containers and related products.
- (13) "Demolition debris" means waste resulting from the demolition of buildings and other manmade structures which may include untreated wood, masonry, glass and plastic building parts. Demolition debris does not include asbestos wastes, clean fill nor

treated wood products.

- (14) "Demolition debris land disposal facility" means a site used only to dispose of demolition debris, including the Village landfill.
- (15) "Fluorescent light bulbs" means a glass tube coated inside with a fluorescent substance giving off light when mercury vapor in the tube is acted upon by electrons from the cathode.
- (16) "Foam polystyrene packaging" means packaging made primarily from foam polystyrene that satisfies one of the following criteria:
- (a) Is designed for serving food or beverages;
  - (b) Consists of loose particles intended to fill space and cushion the package article in a shipping container;
  - (c) Consists of rigid materials shaped to hold and cushion the packaged article in a shipping container.
- (17) "Garbage" means discarded material resulting from the handling, processing, storage, preparation, serving and consumption of food.
- (18) "Generator" means a person, business, industry, farm, corporation or other entity having the potential to create solid waste.
- (19) "Hazardous waste" means any waste or discarded material or combinations of waste or discarded materials in solid, semi-solid, liquid, or gaseous form which cannot be handled by routine waste management techniques because they pose a substantial present or potential hazard to human health or other living organisms because of their chemical, biological or physical properties. Categories of hazardous waste materials include, but are not limited to, explosives, flammables, oxidizers, poisons,

irritants and corrosives. Hazardous waste does not include sewage sludge; and source material, special nuclear material or byproduct material as defined by the Atomic Energy Act of 1954, as amended.

- (20) "HDPE" means high density polyethylene, labeled by the Society of Plastics Industry (SPI) Code No. 2.
- (21) "Household hazardous waste" means any waste of a solid, semi-solid, liquid, or gaseous form resulting from normal and routine household activities such as cleaning, painting, maintenance, and sanitizing. Such waste shall include but not be limited to: substances which are toxic, corrosive, flammable, irritants, or strong sensitizers, and found in such household products as oven cleaners, cleaning agents, pesticides and solvents.
- (22) "Incineration" means the process by which solid wastes are burned for the purpose of volume or weight reduction, energy recovery or destruction of pathogens in facilities designed for such use.
- (23) "Industrial waste" means byproducts, discards, sludge, rejects, and other waste products created by any manufacturing process, activity or technology, or the performance of a service in which wastes or a nonresidential nature are produced. Such services include, but are not limited to, auto body repair shops, gas stations, dry cleaners, paint shops, furniture stripping shops, junkyards and salvage yards.
- (24) "Infectious waste" means solid waste which may contain pathogens with sufficient numbers and virulence so that exposure to the waste by a susceptible host could result in an infectious disease. Examples of infectious waste would include, but not be limited to, bandages, dressings, needles and tissues, fluids or body parts from medical, dental and veterinary sources including clinics, hospitals, ambulances, nursing homes and care of medical, dental

and veterinary patients.

- (25) "Land disposal facility" means a facility where solid waste is placed in a land spreading facility, a landfill, or surface impoundment facility for disposal purposes.
- (26) "Land pollution" means the presence in or on the land of any waste in such quantity, of such nature and duration and under such condition as would affect injuriously any waters of the state, create air contaminants or cause air pollution.
- (27) "LDPE" means low density polyethylene, labeled by the SPI Code No. 4.
- (28) "Litter" means solid waste scattered about in a careless manner, usually rubbish.
- (29) "Magazines" means magazines and other materials printed on similar paper.
- (30) "Multiple-family dwelling" means a property containing four or more residential units, including those which are occupied seasonally.
- (31) "Newspaper" means a newspaper and other materials printed on newsprint.
- (32) "Nonresidential facilities and properties" means commercial, retail, industrial, institutional and governmental facilities and properties. This term does not include multiple-family dwellings.
- (33) "Office paper" means high grade printing and writing papers. Printed white ledger and computer printout are examples of office paper generally accepted as high grade. This term does not include industrial process waste.
- (34) "Open burning" means combustion in which the byproducts thereof are emitted directly into the ambient air without passing through a properly sized stack or chimney with sufficient pollution control devices to control emissions to meet State of

Wisconsin and nuisance standards and is not capable of being licensed or permitted by the Wisconsin Department of Natural Resources as a solid waste incinerator.

- (35) "Operation" means any site, facility or activity relating to solid waste management.
- (36) "Other resins or multiple resins" means plastic resins labeled by the SPI Code No. 7.
- (37) "Person" means any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association or other organization, any receiver, trustee, assignee, agent or other legal representative of any of the foregoing or any other legal entity.
- (38) "PETE" means polyethylene terephthalate, labeled by the SPI Code No. 1.
- (39) "Plastic container" means an individual, separate, rigid plastic bottle, can, jar or carton, except for a blister pack, that is originally used to contain a product that is the subject of retail sale.
- (40) "Post-consumer waste" means solid waste other than:
- (a) Solid waste generated in the production of goods;
  - (b) Hazardous waste, as defined in Section 144.61(5), Wisconsin Statutes;
  - (c) Waste from construction and demolition of structures, scrap automobiles;
  - (d) Or high-volume industrial waste, as defined in Section 144.44(7)(a)1, Wisconsin Statutes.
- (41) "PP" means polypropylene, labeled by the SPI Code No. 5.

- (42) "Processed waste" means waste that is baled, shredded, pulverized, composted, classified, separated, combusted or otherwise treated or altered by some means to facilitate further transfer, processing, utilization or disposal.
- (43) "PS" means polystyrene, labeled by the SPI Code No. 6.
- (44) "Putrescible waste" means waste which contains organic matter capable of being decomposed by the Micro-organisms and of such a character and proportion as to be capable of supporting a vector population or attracting or providing food for birds, or which may reach a fowls state of decay or decomposition.
- (45) "PVC" means polyvinyl chloride, labeled by the SPI Code No. 3.
- (46) "Recyclable materials" means materials that are separated from solid waste, for the purpose of recycling, including the following:
- Residential mail, magazines, newspapers, phone books, paperback books and office paper (no wrapping paper, neon or other bright colored paper)
  - Shredded paper in a closed paper bag
  - Aerosol cans (empty and cap removed)
  - Paper grocery bags
  - Paperboard (cereal, chip, cracker, cake, pop, beer, tissue and frozen food boxes)
  - Pizza boxes (clean food particles and grease from box)
  - Corrugated cardboard (broken down)
  - Egg cartons
  - Aluminum cans, clean aluminum foil, all tin and steel cans
  - Glass food jars (any color) unbroken
  - Glass beverage bottles (any color) unbroken

- Rinsed motor oil containers
- All plastic 1-7 including milk jugs, kids toys, laundry detergent containers, ketchup bottles, soda and water bottles, tubs and dairy containers and landscaping edging

The following items are not acceptable for purpose of recycling:

- Porcelain, ceramics and pottery
- Plastic bags, Styrofoam, foam and packing peanuts
- Food waste
- Deli or black takeout containers
- Window glass
- Mirrors
- Light bulbs
- Compost
- Foil gift wrapping paper [Ord. 631 02/13]

- (47) "Recycling facility" means a facility where recyclable materials are purchased or received from generators or collectors, processed for marketing or loaded onto vehicles for transport to market.
- (48) "Refuse" means garbage and other non-hazardous, non-recyclable solid waste such as is typically collected for disposal by a licensed refuse disposal contractor.
- (49) "Sanitary landfill" means a land disposal site, permitted by the Department of Natural Resources and Pierce County, employing an engineered method of disposing of solid waste on land in a manner that minimizes environmental hazards by spreading the solid waste in thin layers, compacting the solid waste to the smallest practical volume and applying cover material at the end of each operating day, or at intervals as may be required by the Department of Natural Resources and Pierce County. Engineered sanitary landfills must have impermeable clay or membrane type liners, leachate collection and treatment provision and surface water diversions according to Department of Natural Resources and county standards.

- (50) To "Scavenge" means the uncontrolled removal of materials at any point in solid waste management.
- (51) "Shoreland" means land located within the following distances from public water: a) one thousand feet from the ordinary high water mark of a lake, pond or flowage; and b) three hundred feet from a river or stream or the landward extent of a floodplain designated by ordinance on such a river or stream, whichever is greater.
- (52) "Solid waste" means garbage, debris from construction and demolition activities, refuse, sludge from a water supply treatment plant or a contaminant treatment facility, non-hazardous medical waste or other discarded waste materials and sludge in solid, semisolid, liquid or contained gaseous form, resulting from residential, industrial, commercial, mining or agriculture operations or from community activities but does not include hazardous waste; un-rinsed or partially filled pesticide containers' animal waste used as fertilizer; clean fill, sewage sludge, solid or dissolved material in domestic sewage or other common pollutants in water resources such as silt, dissolved or suspended soils or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under Section 402 of the Federal dissolved materials in irrigation return flows; or source material, special nuclear material or byproduct material as defined by the Atomic Energy Act of 1954, as amended, and any other radioactive material.
- (53) "Solid waste disposal facility" means an operation for the discharge, deposit, injection, combustion, dumping or placing of any solid waste into or on any land, water or air in a manner which may permit the solid waste or any constituent of the solid waste to be emitted into the air, to

be discharged into any waters of the state or otherwise to enter into the environment. Solid waste disposal facility does not include the transportation, storage or intermediate treatment of solid waste.

- (54) "Solid waste management facility" means a sanitary landfill, demolition debris landfill, incinerator, open burn site, recycling center, composting facility, intermediate facility or other operation designed to store, process or dispose of solid waste.
- (55) "Solid waste management" means the storage, collection or removal of solid waste from or on public or private property, its transportation to intermediate or final disposal facilities or its final disposal by methods approved by the Department of Natural Resources and Pierce County.
- (56) "Sludge" means any waste that is in solid, semisolid, or liquid form generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility.
- (57) "Transfer station" means an intermediate solid waste facility in which solid waste collected from any source is temporarily deposited to await transportation to another solid waste management facility.
- (58) "Waste tire" means a tire that is no longer suitable for its original purpose because of wear, damage or defect and which has been removed from a vehicle.
- (59) "Water pollution" means: a) the discharge of any pollutant into any waters of the state or the contamination of any waters of the state so as to create a nuisance or render such water unclean or noxious or impure so as to be actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, agricultural, commercial,

industrial, recreational or other legitimate uses or to livestock, animals, birds, fish or other aquatic life; or b) the manmade or man-induced alteration of the chemical, physical, biological, thermal or radiological integrity of waters of the state.

(60) "Waters of the state" means waters, surface or underground, except those surface waters which are not confined but are spread and diffused over the land. "Waters of the state" includes all boundary and inland waters

(61) "White goods" means used major residential or commercial appliances such as washers, dryers, refrigerators, air conditions, freezers, stoves, furnaces, boilers, dehumidifiers, water heaters, dishwashers, ovens and microwave ovens.

(62) "Volume based user fee systems" means fees that are charged by the waste hauler for solid waste collection and disposal services in relation to the volume or weight of the materials disposed.

(63) "Yard wastes" means the garden wastes, leaves, lawn cuttings, weeds and other non-woody vegetative wastes generated at residential or commercial properties.

(2) GENERAL PROVISIONS.

(a) No person shall cause, permit or allow land or property to be used for solid waste management purposes, except at an operation for which a license has been granted by the Wisconsin Department of Natural Resources and subject to approval of the Village Board.

(b) No person shall burn, dump, place, deposit, bury or otherwise dispose of solid waste in, or cause the littering of, any roadside, public park, private property, waterway or other body of water or any other geographical component of the Village; except however, burning done pursuant to a burning permit issued under Sec. 11.11, and except for the composting organic

wastes generated by a one or two family residential unit. Organic wastes which may be composted includes leaves, grass clippings, garden trimmings and vegetative food and kitchen wastes. Meat, meat scraps, bones and grease shall not be composted because of potential nuisance problems.

- (c) Each person shall be responsible for the legal and safe storage, collection, transportation and disposal of solid waste generated in that person's residence or place of business. Any person illegally storing, collecting, transporting or placing in final disposal solid waste generated by that person or that person's residence shall be responsible for proper pickup, disposal and repair of any damages resulting therefrom.
- (d) No person shall dispose recyclable materials in any manner other than that which will ultimately result in said materials being collected for and processed by a recycling facility. No recyclable materials may be placed in bags or other containers designed for pickup as refuse.
- (e) No person shall scavenge solid waste or recyclable materials.
- (f) For the purposes of determining ownership and responsibility for improperly or illegally stored, transported or disposed solid waste, the presence of three or more pieces of mail with the same name and address shall be sufficient to establish presumptive ownership of the solid waste.
- (g) The provisions of this Section are cumulative limitations upon all other laws and chapters heretofore passed or which may be passed hereafter, covering any subject matter of this Section.

(3) SOLID WASTE AND RECYCLABLE MATERIAL STORAGE. (a) Solid waste shall be stored in a manner which complies with rules administered by the Wisconsin Department of Natural Resources and Pierce County. [Ord. 631 02/13]

- (b) Hazardous waste shall be stored and discarded in accordance with rules administered by the

Wisconsin Department of Natural Resources and Pierce County and all applicable federal and state rules.

- (c) Putrescible solid waste shall not be stored on public or private property for more than seven days without the written approval of the department of land management unless in compliance with the provisions of this chapter. Non-putrescible wastes suitable for recycling shall not be stored on public or private property for more than thirty (30) days or in a manner which creates a nuisance, blight or health hazard. Intermediate and finished compost are excluded from the storage limitations.
- (d) Solid waste at a solid waste storage facility shall not be burned. Fires at any solid waste storage facility shall be immediately extinguished in a manner which would not result in water pollution, land pollution or injury to human health.
- (e) Suitable containers of a type approved by the Village and its contract Refuse/Recyclable Materials Hauler shall be provided and used by the property Owner or Tenant in which to store all solid waste and recyclable materials except for bulky or certain yard wastes as provided herein. Only recyclable carts provided by the Hauler and approved by the Village shall be used for storage of recyclable materials. Refuse shall be stored in carts provided by the Hauler, or in bags in a size approved by the Hauler for curbside refuse pick-up. Containers shall provide for efficient, safe and sanitary handling of solid wastes. They shall be maintained in a nuisance and odor-free condition and shall be sufficient to prevent the scattering of contents by weather conditions or animals. Container and canister sites shall be screened by neat and attractive material where exposed to public view. All such containers shall be emptied not less than weekly. [Ord. 631 02/13]
- (f) Storage areas shall be kept in a nuisance and

odor-free condition. Litter shall not be allowed to accumulate. Collection crews will not be responsible for cleaning up loose materials from any containers which have become ruptured or broken due to wet conditions, animals, vandalism or other cause. The occupant and/or owner shall be responsible for cleaning up this litter. Litter not collected shall not be allowed to accumulate. Violation will result in the occupant and/or owner being notified to clean up the affected area with continued violation resulting in the owner being prosecuted under the provision of this and other Village ordinances.

(4) RESIDENTIAL REFUSE AND RECYCLING MATERIAL COLLECTION AND DISPOSAL. (a) The Village shall contract with a Refuse/Recyclable Materials Hauler to collect and dispose of household refuse and recyclables from all single family, two family and three family residences in the Village. [Ord. 393, 631 02/13].

- (b) Such collection and disposal shall be by a Hauler, as the Village Board may from time-to-time determine. [Ord. 631 02/13]
- (c) The residents of all single family, two family and three family residences shall place the refuse to be collected from the property in carts approved by the Village and supplied by its Hauler, or in plastic or similar types garbage bags (which bags shall not exceed 33 gallons in volume). Only one recyclable material cart shall be furnished for each residence. Where carts are used the property owner shall pay a monthly service fee, paid quarterly, in accordance with a schedule of fees from time-to-time established by the Village Board in its contract with the Hauler. All refuse and recyclable materials shall be placed at the curb or Lot line of the property not later than 6:00 a.m. on the day on which collection is to be made. Neither refuse nor recyclable materials may be placed at curbside more than 24 hours prior to the scheduled pick-up time. Collection shall be made on Mondays of each week except where Monday falls on Christmas day, in which case pick-up shall be on the following Tuesday. Lost, damaged or

destroyed carts whether used for recyclable materials or refuse purposes, shall be replaced at the expense of the resident. [Ord. 559 10/05, 631 02/13]

- (d) The Village Board hereby imposes a monthly service charge for recycling and a per bag collection fee to be determined from time to time by resolution of the Village Board and/or contract between the Village and the Hauler. Where the resident uses a bag to dispose of refuse, which bag shall not exceed 33 gallons, a refuse disposal sticker must be placed on each such bag. Such refuse disposal stickers shall be available at the office of the Village Clerk. [Ord. 278, 393, 443, 631 02/13].
- (e) Where refuse or recyclable materials are left at curb side and are not in proper containers, and therefore not picked up by the Hauler, or where refuse is left in a bag for collection without sticker, or where the bag exceeds 33 gallons in size and the Hauler does not pick up such refuse or recyclable material, then the Village or its designee may pick up and dispose of such refuse or recyclable material and assess the property owner a charge, as is established from time-to-time by resolution of the Village Board, for each 33 gallon bag or refuse or recyclable material, or its equivalent, so collected. On or about October 15 of each year the Village Clerk shall send a notice to the occupants of all residences whose refuse was so picked up setting forth the additional charge assessed against them for the preceding fiscal year, and directing said owner to pay the charge assessed on or before November 1, and if not so paid, to levy the same as a tax against the lot or parcel or real estate in which the refuse collection service was furnished and for which payment was not made. All proceedings in relation to the collection of general property taxes and to the return and sale of property for delinquent taxes, as provided by State Law, shall apply to such charge if the same is not paid within the time required by law for payment of taxes upon real estate. [Ord. 475, 631 02/13]
- (f) Household hazardous wastes shall not be placed in refuse collection bags or carts nor in

recyclable material carts. All household hazardous wastes shall be disposed of by the property owner at the semi-annual collection of such wastes by the Pierce County Recycling Facility or in other approved manner for disposal of household hazardous wastes. [Ord 631 02/13]

- (g) White goods and all other non-recyclable refuse too large for a 33 gallon garbage bag and not acceptable in the Village landfill shall be placed at curbside for pickup pursuant to prior arrangement of a refuse disposal contractor. [Ord. 631 02/13]
- (h) Demolition debris, clean fill and yard wastes may be disposed in the Village landfill as provided in Section 11.14.

(5) **COMMERCIAL AND INDUSTRIAL REFUSE COLLECTION AND DISPOSAL.** Commercial and industrial solid waste, and wastes from non-residential facilities and properties, including hazardous wastes, garbage and recyclables, shall be disposed in compliance with local, state and federal laws by a licensed refuse disposal contractor. [Ord. 592 06/2009]

(7) **VIOLATION - PENALTY.** (a) Any person who violates or fails, neglects or refuses to comply with the provisions of this section shall be guilty of an ordinance violation and upon conviction thereof shall pay a forfeiture and costs as provided in section 25.04 a separate offense shall be deemed committed upon each separate day during or on which a violation occurs or continues.

- (b) This section, in addition to other remedies, may be enforced by injunction, action to compel performance or other appropriate action in Circuit Court to prevent, restrain, correct or abate violations. [Ord. 610 03/2011]

11.11 **BURNING PROHIBITED.** (1) No person shall burn rubbish, garbage, or other household waste or hazardous material in the Village Of Ellsworth. Nor shall any person keep or maintain an open fire or flame except as follows:

- (a) Fires set by the Ellsworth Fire Department for practice and instruction of firefighters.
- (b) Outdoor fires used for cooking and recreational purposes. These are defined and limited to

charcoal and gas grills, freestanding fireplaces (clay or metal) or fire pits.

(2) Apartment, townhouse, and condominium association rules must be strictly followed when using charcoal and gas grills, freestanding fireplaces (clay or metal) or fire pits.

(3) Construction and use of fire pits shall meet the following requirements:

- (a) The diameter of the pit shall not exceed three feet.
  - (b) The fire pit shall be fully enclosed and screened for safety to prevent escape of embers, sparks and ashes.
  - (c) The rim of the pit shall be lined with rock, concrete, brick or metal.
  - (d) Fire pits shall be located a minimum of 15 feet from combustible structures.
  - (e) Fire pits must be attended by at least one person 18 years of age or older while the fire is burning.
  - (f) A fully charged and properly working fire extinguisher or water hose (hooked up to a water hydrant) must be available nearby at all times. "Nearby" means close enough to extinguish the fire in the pit.
  - (g) Only split firewood, tree limbs or charcoal may be burned.
  - (h) When burning, all burning materials shall be completely contained within the fire pit and shall not extend beyond the confines of the fire pit or freestanding fireplace.
  - (i) At no time shall the fire exceed 3 feet in height. The fire shall produce little detectable smoke, odor or soot beyond the property line on which the fire is constructed.
  - (j) The fire and embers must be completely extinguished before the fire pit area is vacated. [Ord 563 08/2006]
- (4) The Fire Chief or Designee has the authority to issue

a burning ban at any time due to weather conditions or other hazardous conditions that may exist.

(5) Outdoor Solid Fuel Heating Devices.

(a) Outdoor Solid Fuel Heating Device defined: An outdoor device, structure, building or apparatus which supplies direct or indirect heat from the burning of solid fuel, including but not limited to wood, to another building.

(b) (1) Only Solid Fuel or Biomass Outdoor Heating Devices which comply with Phase 2 EPA Guidelines, and as thereafter amended, are allowed to be installed or operated within the Village of Ellsworth, provided, however, said device complies with all Zoning Ordinance Setback Requirements for accessory buildings if located outside of a building or accessory building. All other Solid Fuel or Biomass Outdoor Heating Devices are prohibited within the Village of Ellsworth.

(2) Any Solid Fuel or Biomass Outdoor Heating Device which is in place at the time of adoption of this Section must be brought into full compliance with this Section on or before November 2, 2010.

(3) Should any Solid Fuel or Biomass Outdoor Heating Device permitted under this Section, including any existing device permitted to continue as per Subsec. (2) become hazardous, harmful, noxious, or offensive and thus a nuisance to an adjoining neighbor or the surrounding neighborhood as determined by the building inspector, fire chief, and/or village Health officer, then the owner shall correct, improve or abate the nuisance using whatever means are necessary in accordance with this section. Operation of the device shall be discontinued until a solution to the nuisance is employed and the nuisance this eliminated. In the event the nuisance is not immediately abated upon receiving directive of the building inspector, fire chief, and/or village health officer, then the owner of the property shall be subject to the penalty in

Section 25.04, and separate action may be commenced against the owner for an injunction to enjoin the use of the Outdoor Heating Device.

- 4) Solid Fuel or Biomass Outdoor Heating devices may be used only during the period from and including September 15 to the succeeding May 15. [Ord. 598 11/2009]

(6) Enforcement. A Violation of this ordinance shall be subject to a penalty as provided in Section 25.04 of the Municipal Code. In addition, the Police Department shall have the authority to require any person or property owner to cease and desist from violating the provisions of this ordinance. In the event any such person or property owner fail to so immediately cease and desist, the Police Department may contact the Fire Department to extinguish the fire. If so required, the cost of extinguishing the fire call be charged against the property owner and become a lien against the property if unpaid and entered on the tax roll as a special tax against the property and collected as are other real estate taxes assessed against the property. The cost of such extinguishment shall be determined by the Fire Department, taking into consideration the equipment and labor involved, and in accordance with their normal fee schedule for such services. [Ord. 563 08/06]

11.12 MINOR POSSESSION OF CIGARETTE OR TOBACCO PRODUCT OR ELECTRONIC NICOTINE DELIVERY SYSTEMS.

- (1) No child may do any of the following:
  - (a) Buy or attempt to buy any cigarette or tobacco product.
  - (b) Falsely represent his or her age for the purpose of receiving any cigarette or tobacco product
  - (c) Possess any cigarette or tobacco product.
  - (d) No Person under the age of 18 years may possess electronic nicotine delivery systems (ENDS) or any of their components or parts. Components or parts of ENDS include e-liquid, cartridges, atomizers, cartomizers and clearomizers, tank systems, drip tips, and flavorings for ENDS. ENDS include what are commonly referred to as vapes, vaporizers, vape pens, hookah pens, electronic cigarettes, e-cigarettes, e-cigs and e-pipes, which products use an "e-liquid" which may contain nicotine as well as other compositions. ENDS include, but is not limited

to, ENDS and their components and parts regulated by the Federal Drug Administration, under the rules set forth in the Federal Register, 81 FR 28973. [Ord.660 3/17, Ord 669 11/18Ord 679 10/19]

(2) A child may purchase or possess cigarettes or tobacco products or electronic delivery device, product, component or part for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer licensed under Sec. 134.65 (1), Wis. Stats. [Ord.679]

(3) The definitions contained in Sec. 254.911 Wis. Stats., shall govern the interpretation of this Ordinance. [Ord. 523 8/02]

(4) A law enforcement officer shall seize any cigarette, tobacco product or electronic delivery device, product, component or part involved in any violation of this Section committed in his or her presence. [Ord. 425 Ord 679]

(5) No person shall furnish any cigarette, tobacco product or electronic delivery device, product, component or part to a child. [Ord. 478 Ord.679]

11.13 SMOKING AND VAPING PROHIBITED. (1) Purpose. This Ordinance is adopted in conformity with Sec. 101.123, Wis. Stats., and for the purpose of protecting the public health, safety, comfort and general welfare of the people of the Village of Ellsworth, especially recognizing the health interest of nonsmokers.

(2) Definitions. For purposes of this Section, the following terms have the meaning indicated:

(a) "Assisted living facility" means a community-based residential facility, as defined in Sec. 50.01(1g), a residential care apartment complex, as defined in sec 50.01(1d), Wis. Stats. Or an adult family home, as defined in sec. 50.01(1)(b) Wis. Stats.

(b) "Bed and breakfast establishment" has the meaning set forth in Sec. 254.61(1), Wis. Stats.

(c) "Child care facility" shall mean any licensed or certified child care facility, including, but not limited to licensed family day care or licensed group day care centers, licensed day camps, certified school-age programs, and Head Start programs.

- (d) "Cigarette" has the meaning set forth in Sec. 139.30(1), Wis. Stats.
- (e) "Enclosed area" shall mean all space between a floor and ceiling that is bounded by walls, doors, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A 0.011gauge screen with an 18 by 16 mesh court is not a wall.
- (f) "Entrance" shall mean a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk, or parking lot.
- (g) "Health care facility" has the meaning set forth in Sec. 155.01(6), Wis. Stats. (h)  
"Hotel and motel" have the meaning set forth in Sec. 254.61(3), Wis. Stats.
- (i) "Mall" shall mean an enclosed area containing common areas and discrete businesses and stores primarily devoted to the retail sale of goods and services.
- (j) "Medical services" has the meaning set forth in Sec. 647.01(6), Wis. Stats.
- (k) "Non-smoking" shall mean smoking is prohibited.
- (l) "Place of employment" shall mean an enclosed area controlled by the employer which employees normally frequent during the course of employment, including, but not limited to common work areas, private offices, employee lounges, restrooms, conference and meeting rooms, classrooms, health care facilities, cafeterias, stairways, hallways, vehicles, and all other enclosed facilities. A private residence is not a "place of employment" within the meaning of this Ordinance.
- (m) "Person in Charge" means the person or his or her agent who ultimately controls, governs or directs the activities at location where

smoking is prohibited or regulated under this Section.

- (n) "Private club" shall mean an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain and which only sells alcohol beverages incidental to its operation. The affairs and management of the private club are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The private club has established bylaws and/or a constitution to govern the club's activities. The private club has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C.A. Section 501.
- (o) "Private residence" shall mean a premise owned, rented, or leased for temporary or permanent habitation.
- (p) "Public place" shall mean any enclosed area to which the public is invited or in which the public is permitted. A private residence is not a public place unless it is used as a child care facility, adult day care facility, or health care facility.
- (q) "Smoking" shall mean to inhale, exhale, carry, possess, or control any lighted cigarette or any lighted tobacco product in any form or in any manner. The term "smoking" as used in this Section shall also refer to what is customarily referred to as "vaping", in other words, the use of an electronic delivery device or any product or substance used in the device to simulate smoking through inhalation of vapor or aerosol from the product and any of the component parts of an electronic nicotine delivery system. [Ord. 679]
- (r) "Tobacco product" has the meaning set forth in Sec. 139.75(12), Wis. Stats.
- (s) "Electronic nicotine delivery system" or

"Electronic delivery device" means any product containing or delivering nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. "Electronic delivery device" shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or description. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for the use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose."  
[Ord. 679]

- (3) Smoking or vaping prohibited in public places. Except as provided in Section 11.13(6) smoking or vaping in any public place shall be unlawful, including, but not limited to the following:
- (a) Theatres, libraries, museums, auditoriums, and convention halls which are used by or open to the public.
  - (b) Child care facilities.
  - (c) Assisted Living facilities.
  - (d) Retail stores.
  - (e) Health care facilities.
  - (f) Waiting rooms, hallways, or rooms of health care laboratories.
  - (g) Waiting rooms, hallways, and rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist, optician, or other medical service provider.
  - (h) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, and other multiple-unit residential facilities.
  - (i) Restrooms, lobbies, reception areas, hallways,

and other common areas which are used by or open to the public.

- (j) Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political, or social purposes.
  - (k) Polling places.
  - (l) Self-service laundry facilities.
  - (m) Restaurants.
  - (n) Bars, taverns, nightclubs, and cocktail lounges.
  - (o) Common areas of malls, meaning those areas within a mall customarily accessible to patrons.
  - (p) Village facilities, meaning all Village owned and operated buildings and those portions of buildings leased and operated by the Village.
  - (q) Educational facilities, meaning any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board.
  - (r) Sports arenas, meaning sports pavilions, stadiums, gymnasiums, health spas, swimming pools, roller and indoor ice rinks, bowling centers, and other similar places where the public assembles to engage in physical exercise, participate in athletic event competition, or witness a sporting or other event.
  - (s) Common areas in bed and breakfast establishments, hotels and motels, and rooms thereof that are rented to guests and designated as non-smoking rooms including lobbies, community rooms, hallways, laundry rooms, stairwells, elevators, enclosed parking facilities, pool areas, and restrooms within said facilities.
- (4) Smoking or vaping prohibited in places of

employment.

- (a) Except as provided in Section 11.13(6) smoking or vaping in any place of employment shall be unlawful.
  - (b) This prohibition on smoking or vaping shall be communicated to all existing employees prior to the effective date of this Section and to all prospective employees upon their application for employment.
- (5) Smoking or vaping prohibited in specified outdoor areas. Smoking or vaping shall be unlawful in the following areas:
- (a) Within a reasonable distance of all outside entrances to, operable windows of, or ventilation systems of public places or places of employment where smoking or vaping is prohibited pursuant to Section 11.13(3) and 11.13(4) so as to prevent smoke from entering said enclosed areas in which smoking or Vaping is prohibited.
  - (b) In the seating areas of all outdoor arenas, stadiums, and amphitheatres, as well as in the bleachers and grandstands used by spectators at sporting and other public events, including, without limitation, softball, football and baseball fields.
  - (c) Those portions of Village parks temporarily posted as no smoking or vaping areas by the Parks, Recreation, Development Committee when necessary for the public health or safety.
  - (d) Those areas outside of Village facilities that are posted as no smoking or vaping by the Chief of Police, Public Works Director, Village President, Village Board or designee of any thereof.
- (6) Exceptions. The following shall not be subject to and are exempt from the smoking or vaping prohibitions of this Section:
- (a) Use of tobacco by an enrolled member of an Indian tribe, as those terms are defined in Sec. 139.30(4) and (5), Wis. Stats., as part of a traditional spiritual or cultural ceremony.

- (b) Bed and breakfast establishments and hotel and motel rooms that are rented to guests and are designated as smoking or vaping rooms, provided that not more than twenty-five percent (25%) of the rooms rented to guests are designated as smoking rooms. This exception does not include common areas as defined in Sec. 11.13(3) (s).
  - (c) Private residences, except when used as a child care facility, adult day care facility, or health care facility.
  - (d) Private clubs, except when used for a function to which the public is invited or permitted to enter. This exception shall not apply to any organization established to avoid compliance with the Section.
- (7) Signs required.
- (a) Signs prohibiting smoking or vaping shall be posted conspicuously at every public entrance by the proprietor or other person in charge of each building or structure regulated by Section 11.13(3) and 11.13(4). Signs in specified outdoor areas designated as non-smoking or vaping pursuant to Section 11.13(5) shall be placed so the general public has reasonable notice of the prohibition. Signs shall contain the international symbol for no smoking or vaping and the words "No Smoking or Vaping"
    - (b) It shall be unlawful for any person to remove, deface, or destroy any legally required "No Smoking or Vaping" sign.
- (8) Responsibility of Persons in Charge.
- (a) No person in charge may allow any person to smoke or vape at a location that is under the control or direction of the person in charge.
  - (b) A person in charge may not provide matches, ashtrays, or other equipment for smoking or vaping at the location where smoking or vaping is prohibited.
  - (c) A person in charge shall make reasonable efforts to prohibit person from smoking or vaping at a location where smoking or vaping is

prohibited by doing all of the following:

1. Posting signs setting forth the prohibition and providing other appropriate notification and information concerning the prohibition.
  2. Refusing to serve a person, if the person is smoking or vaping in a restaurant, tavern or private club.
  3. Asking a person who is smoking or vaping to refrain from smoking or vaping and, if the person refuses to do so, asking the person to leave the location.
- (d) If a person refuses to leave a location after being requested to do so as provided in par. (c) 3, the person in charge shall immediately notify the Ellsworth Police Department of the violation.
- (e) A person in charge may take measures in addition to those listed in pars. (b) and (c) to prevent person from being exposed to others who are smoking or vaping or to further ensure compliance with this Section.
- (9) Enforcement.
- (a) No person shall retaliate against a person because that person exercises any rights afforded by this Section.
  - (b) The Village Building Inspector, Fire Department or Police Department, shall have the power, whenever it may deem necessary, to enter a building, structure, or property regulated under this Section to ascertain whether the premises are in compliance with this Section. The above-listed departments may issue compliance orders and citations pursuant to the provisions of this code.
- (10) Additional private prohibitions. Nothing in this Section shall prevent a proprietor or other person in charge of any private place from prohibiting smoking or vaping in any indoor or outdoor area under their control.
- (11) Other applicable laws or regulations.

This Section shall not be interpreted or construed to permit smoking or vaping where it is otherwise restricted by any other law or regulation.

(12) Penalty. A person who smokes where it is prohibited is subject to a forfeiture of not less than \$100 plus court costs and penalty assessments nor more than \$250 plus court costs and penalty assessments for each violation. If the person in charge of a facility fails to take any required action to stop illegal smoking, he or she is subject to a forfeiture of \$100 plus court costs and penalty assessments for each violation, but no more than one penalty per day. If the person in charge has not previously received a warning notice, then the law enforcement officer must issue a warning for the first violation in lieu of a citation.

(13) Severability. The provisions of this Section, 11.13, are severable. If any provision of this Section is held to be invalid or unconstitutional, or if the application of any provision of this Section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this Section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared to be the intent of the Village Board that this Section would have been adopted had any invalid or unconstitutional provisions or applications not been included herein. [Ord. 604 06/2010]

11.14 VILLAGE LANDFILL. (1) Only residents of the Village of Ellsworth shall be permitted to dispose of refuse at the Village landfill. Any resident using said landfill may dispose only his or her own refuse, and all such refuse shall have as its origin the Village of Ellsworth. No resident contracting to provide or otherwise providing refuse collection or dumping services shall dispose of such refuse in the Village landfill.

(2) Any person using the Village landfill shall abide by all rules and regulations as may from time to time be established by the Village Board or any of its designees; and shall abide by all rules, regulations and directions as posted at such landfill or as specified or designated by the landfill attendant or other Village employee or officer supervising same.

(3) Any person using the Village landfill during hours when same is not regularly open shall make arrangements through the office of the Village Clerk for a Village employee

to accompany said person to the landfill and supervise dumping there during the entire period such person is using said landfill; and there shall be charged to such user a sum as is from time to time established by resolution of the Village Board per vehicle load, dumped in the landfill during closed hours. No keys for the landfill gate shall be given to or used by any person other than a Village employee. [Ord. 475]

(4) No person shall go upon or use the Village landfill during hours when same is closed except in compliance with Subsection (3).

(5) Any person who violates a provision of this Section shall be subject to the penalty provisions of sec. 25.04 of the Code. [Ord. 346, 443]

11.15 TRUANCY. (1) Prohibition of Truancy. A pupil is prohibited from being truant. A pupil is deemed to be truant if absent from school without an acceptable excuse for part or all of any day in which school is held during a school semester. [Ord. 480; 482]

(2) Prohibition of Habitual Truancy. A pupil is prohibited from being a habitual truant. A "habitual truant shall mean a pupil who is absent from school without an acceptable excuse for part or all of five (5) or more days on which school is held during a semester.

(3) Definitions. (a) "Acceptable excuse" shall mean an acceptable excuse as defined in Sections 118.15 and 118.16 (4), Wis. Stats.

(4) Penalty. (a) Upon finding a pupil is truant, the Court shall enter an order making one or more of the following dispositions:

- (1) An order for the person to attend school;
  - (2) A forfeiture of not more than \$50.00 plus costs for a first violation, or a forfeiture of not more than \$100.00 plus costs for any second or subsequent violation committed within 12 months of the first. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardian of the person, or both.
- (b) Upon finding a pupil is a habitual truant, the Court shall enter an order making one or more of the following dispositions:

- (1) Suspension of the child's operating privilege for up to one year;
- (2) Ordering the child to attend school;
- (3) A forfeiture of not less than \$25.00 nor more than \$500.00 plus costs, all or a portion of which may be assessed against the child, the parents or guardians of the child, or both;
- (4) Any other reasonable conditions, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults;
- (5) An order placing the child under formal or informal supervision for up to one year; and
- (6) An Order for the child's parent, guardian or legal custodian to participate in counseling at the parent's, guardian's or legal custodian's own expense or to attend school with the child, or both.

11.16 HOUSING DISCRIMINATION PROHIBITED. (1) The provisions of Section 106.50, Stats., as amended, are hereby adopted and made a part hereof by reference. [Ord. 523 8/02]

(2) The Village shall assist in the orderly prevention and elimination of all discrimination in housing within the Village of Ellsworth by implementing those enforcement procedures set forth in Section 106.04, Stats.

(3) The Village Clerk shall maintain forms for complaints to be filed under this Section, and shall assist persons alleging a violation thereof to file a complaint thereunder with the Wisconsin Department of Workforce Development, Equal Rights Division, for enforcement of Section 106.04, Stats., as amended. [Ord. 467]

11.17 MAPLE GROVE CEMETERY (a) Maple Grove Cemetery is a municipal owned and operated cemetery. (b) The Public Works Director, through the Department of Public Works, shall supervise maintenance of the cemetery, including upkeep and plowing of roads, landscaping, tree trimming and removal, repair of fences and equipment and removal of trash and debris

- (c) The Sexton shall have the following duties:
- (1) Supervision of digging of graves.
  - (2) Cataloging and updating an accurate Cemetery Lot Map and assisting the Village Clerk in updating the Cemetery records. These records shall be maintained in the office of the Village Clerk who shall have responsibility of maintenance to the Cemetery records.
  - (3) Serve as the intermediary contact with monument companies to assist them with their activities in the cemetery.
  - (4) Assist in the sale of cemetery lots. The actual sale of lots shall be conducted by the Village Clerk; the Sexton shall assist insofar as necessary to assure there is no duplication of sale.
  - (5) Monitor maintenance and improvements needed to make the cemetery an attractive and accessible facility, and report thereon to the Cemetery Committee appointed under Sec. 1.03(7), the sexton shall serve as an advisory member thereof."
  - (6) Such other duties as may be delegated to Sexton from time to time by the Cemetery Committee and approved by the Village Board. [Ord. 559 10/05]
- (d) The following regulations shall apply to the Cemetery:
- (1) All cemetery burial shall use a grave liner.
  - (2) The standard grave site size shall be 4 feet by 11 feet and shall be sold for such price as the Village Board from time to time establishes by Resolution. One body shall be permitted per grave site; or four (4) cremains shall be allowed on each grave site.
  - (3) Deeds for grave sites shall be issued by

the Village Clerk and accurate record of the conveyance maintained in the Cemetery Record Book.

- (4) The owner of the grave site shall be responsible for payment of the grave opening and closing. Burial vaults shall be buried at a minimum depth of 60 inches. cremains shall be buried at a minimum depth of thirty inches (30").
- (5) Grave site and lot monuments shall be placed according to the markings and directions made by the Sexton.
- (6) The price paid for a grave site shall include perpetual care thereof. Perpetual care shall not include the cost of leveling, repairing or replacing monuments. The Village may require a lot owner to do anything necessary to comply with the regulations of this Section by giving reasonable notice in writing to the owner thereof. In the event the owner fails to comply within (20) days thereafter the Village may cause the thing to be done and recover the cost from the owner. As used in this Subsection the term "owner" includes the estate of the decedent whose remains are placed in the grave site.
- (7) Grave site owner grievances shall be first addressed by the Village Clerk. If not resolved to the mutual satisfaction of the grave site owner and Village Clerk's office the matter may be brought before the Cemetery Committee for hearing and recommendation to the Village Board. [Ord. 536 04/04]

11.18 SMOKE ALARMS/FIRE DETECTORS. (1) All residential rental dwellings shall have installed and in good working condition, on each main floor and on each floor upon which there is located sleeping quarters or one or more bedrooms, a smoke alarm or fire detector powered from a source independent of the electrical system in said dwelling.

(2) "Residential dwelling unit" as used in this section refers to any unit of housing, including single family, two family and duplexes, and multifamily housing units wherein there

reside one or more persons who are not the legal and fee owner of the premises. [Ord. 349]

(3) The owner of the dwelling unit shall be responsible for ensuring that the smoke alarm or fire detector required under this section is properly installed and in good working condition on the premises. [Ord.351]

(4) The Ellsworth Fire Association Inspectors and the Village of Ellsworth Police Department are charged with enforcement of this Ordinance. [Ord. 351, 559 10/05, 587 07/08]

11.19 SECURITY KEY AND VAULT SYSTEM. (1) KNOX BOX REQUIRED. The Knox Box vault system is hereby adopted for use by the Ellsworth Fire Department and the Ellsworth Police Dept. in the Village of Ellsworth. A Knox Box shall be installed in all existing or newly constructed [Ord.587 07/08]:

- (a) Multiple family housing buildings containing more than four dwelling units and in which there is located an automatic alarm system;
- (b) School buildings and school administrative offices containing more than 18,000 square feet;
- (c) All buildings and structures located on lands zoned industrial or light industrial;
- (d) Publicly owned buildings and structures including State, County and Village buildings and structures containing more than 18,000 square feet; and
- (e) Any other building or structure access to which the owner requests said departments to have.
- (f) Commercial property in which there is located an automatic alarm system and/or a sprinkler system. [Ord. 587 07/08]

(2) INSTALLATION. The Knox Box shall be installed at the expense of the owner of the building and shall be placed at such locations as designated by the Fire Chief of the Ellsworth Fire Department. No multiple family dwelling containing more than four dwelling units shall be occupied until said system has been installed. [Ord. 488, 559 10/05, 587 07/08]

11.20 ULTIMATE FIGHTING PROHIBITED (1) Prohibited activity. It shall be unlawful to promote, host, organize, stage, conduct and/or participate in the practice of Ultimate Fighting or Extreme Fighting as defined in this Section in or

upon any street, alley, sidewalk, park or any premises owned by the Village of Ellsworth in the Village of Ellsworth.

(2) Definition. The terms "Ultimate Fighting" or "Extreme Fighting" shall mean any activity, regardless how named or described, or any other form of entertainment, where the primary practice involves individuals engaged in physical contact by striking or touching an opponent with hands, head, feet, or body. This shall include, but not be limited to, any contest or event where kicking, punching, martial arts, or submission holds are permitted. Officially sanctioned and regulated boxing under Chapter 444, Wis Stats., team sports in which physical contact is incidental to the primary purpose of the game, including, but not limited to, wrestling, football, basketball, volleyball, soccer, baseball, and softball, and martial arts training and contests sponsored by a public or private elementary, middle or high school, or by a school offering a regular course of instruction in martial arts, are not included among activities prohibited by this section.

(3) Injunctive relief. The Village or its designated representatives may institute a suit seeking injunctive relief against any person violating this ordinance.

(4) Penalty. Any person violating this ordinance shall be subject to the penalty set forth in section 25.04. Separate fines may be issued to the promoter, and participants in such an event. Every day that a violation occurs shall constitute a separate offense. [Ord. 583 04/2008]

#### 11.21 SEX OFFENDER RESIDENCY RESTRICTIONS

(1) Findings and Intent.

A. Findings. Studies show that sex offenders, including sex offenders who use physical violence or the threat thereof and sex offenders who prey on children are sex predators who present a serious threat to the public safety. These offenders present an alarming high risk of re-offending once released. Sex offenders are extremely likely to use physical violence when they offend; and many sex offenders commit multiple offenses, have more victims that are never reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society great, and it justifies efforts to protect the public from such victimization. Because reducing both opportunity and temptation will minimize the

risk of re-offense for those Sex Offenders who are likely to re-commit sex offenses especially those against children, there is a compelling need to separate Sex Offenders from places where children congregate or play in public places.

B. Intent. This Section is a regulatory measure aimed at protecting the health and safety of children in the Village from the risk that convicted sex offenders may re-offend in locations close to their residence and parks, schools, daycares and churches where they are cared for, recreate, study or worship. The Village establishes these regulations in order to provide protection to children in the Village by minimizing immediate access and proximity to children and thereby reducing opportunity and temptation for recidivism. It is the intent of the Village Board to protect the safety and welfare of its citizens by creating zones around places where children regularly gather, in which certain Sex Offenders are prohibited from establishing Residency. It is expressly not the intent of the Village Board to impose additional punishment on Sex Offenders.

(2) Definitions. The following words, terms and phrases, when used in Section 11.21 and 11.22, shall have the meanings ascribed to them below:

A. "Child" or "children" or "minor" means a person who has not attained the age of 18 years, for purposes of this Section.

B. "Child Care Facility" means a childcare facility that is operated by a person under Wis. Stat. §48.65 or certified under s.48.651 or that is established or contracted for under Wis. Stat. §120.13(4), or a group home as defined in Wis. Stat. §48.02(7).

C. "Child Safety Zone" in this Section 11.21 means an area within 1,000 feet of any school, park, child care facility licensed pursuant to Wis. Stat. §48.65, or certified under Wis. Stat. §48.65(1) or that is established or contracted for under Wis. Stat. §120.123(4), group home as defined in Wis. Stat. §48.02(7), or youth center within the Village of Ellsworth.

- D. "Park" means a children's playground or park, including one having athletic facilities used by children, or a recreational trail, owned or maintained by the State or by a City, Village, Town or County, or by a homeowners association, condominium association, church, or school.
  - E. "Residence" means a place where a person resides or dwells, or is used by a person as the primary location for basic life functions such as sleeping or eating, whether short-or long-term, but for an aggregate of 14 or more days in an one-year period.
  - F. "School" means a public, parochial or private school as defined in Wis. Stat. §115.001(15m) which provides an educational program for one or more grades between grades 4-K and 12 and which is commonly known as a pre-school, elementary school, middle school or high school.
  - G. "Sex Offender" means any person who is or was required to register under Section 301.45, Wisconsin Statutes, for any sexual offense against a child, or any person who is or was required to register under Section 301.45, Wisconsin Statutes, and who has been designated a Special Bulletin (SBN) sex offender pursuant to Sections 301.46(2) and (2m), Wisconsin Statutes.
  - H. "Youth Center" means any center, including one sponsored by or at a church, that provides, on a regular basis, recreational, vocational, academic, service group (such as 4H, Boy Scouts, Girl Scouts) or social service activities for children and their families.
- (3) Residence Restriction, Exceptions. No Sex Offender shall establish or maintain a Residence within a Child Safety Zone, except under the following circumstance:
- A. It is specifically ordered that the Sex Offender reside within a Child Safety Zone by a circuit court having competent jurisdiction.

- B. The Sex Offender established the Residence within 1,000 feet of a school, park, child care facility, group home or youth center, and reported and registered the Residence pursuant to Wis. Stats §301.45, before the effective date of this ordinance, that being November 6, 2017.
  - C. The person is excepted from sex-offender registration pursuant to Wis. Stats. §301.45(1m).
  - D. The school, park, child care facility, group home or youth center around which a Child Safety Zone exists first existed after the Sex Offender established Residence and reported and registered the Residence pursuant to Wis. Stats. §301.45.
  - E. The Sex Offender's Residence is within a jail, juvenile facility or other correctional facility at which the Sex Offender is servicing a court-ordered sentence.
  - F. The Sex Offender is a Minor or ward under guardianship, or is a person under age 21 and currently enrolled in high school, and is residing with his or her parent or guardian. In such cases involving a Minor or ward placed in accordance with this exception, when the Minor or ward turns 18 years of age, the Minor or ward shall be allowed to continue to reside at the already established residence.
- (4) Measurement of Distances. The boundaries of the Child Safety Zone shall be determined by measuring from the outer property boundary of schools, parks, child care facilities, or group homes along the shortest line to the outer property boundary of a Sex Offender's Residence. If any portion of a property is within a Child Safety Zone, then the entire property shall be deemed within the Child Safety Zone.
- (5) Map. A map depicting the above-enumerated uses and resulting residency restriction distances shall be adopted by Resolution of the Village Board, and which map may be amended from time to

time, is on file in the Office of the Village Clerk for public inspection.

- (6) Notification. A Sex Offender must notify the Police Department a minimum of twenty-eight (28) days prior to establishing a Residence within the Village of Ellsworth.
- (7) Property Owners Prohibited from Renting Real Property to Certain Sexual Offenders and Sexual Predators. It shall be unlawful for any property owner to lease or rent any place, structure, mobile home, trailer or any part thereof, with the knowledge that it will be used as a Residence by any person prohibited from establishing a Residence therein pursuant to this Section, if such place, structure, or mobile home, trailer or any part thereof, is located within a Child Safety Zone as defined in Section 54-20(b) (5).
- (8) Public Nuisance. Any violation of this Section shall be deemed a public nuisance affecting peace and safety, and the Village may proceed to abate the nuisance under Chapter 10 and/or 25 of the Code of Ordinances and/or Chapter 823 of the Wisconsin Statutes.
- (9) Injunction for Violation of Residence Restrictions. If an offender establishes a Residence in violation of subsection (c) above, the Chief of Police may refer the matter to the Village Attorney. The referral shall include a written determination by the Chief or Police that, upon all of the facts and circumstances and the purpose and intent of this Section, such violation interferes substantially with the comfortable enjoyment of life, health, and safety of another or others. Upon such referral, the Village Attorney shall bring an action in the name of the Village in Circuit Court to permanently enjoin such Residence as a public nuisance.
- (10) Severability. Should any section, paragraph, sentence, clause or phrase of this Section be declared unconstitutional or invalid, or be repealed, it should not affect the validity of this Section as a whole, or any part thereof, other than the part so declared to be invalid or repealed.

(11) Appeal for an Exemption.

- A. A Sex Offender may seek an exemption from this Section by appealing to the Sex Offender Residency Board (the "Appeals Board").
- B. The Appeals Board shall consist of three citizens and one alternate who are residents of the Village. For the initial appointments to the Appeals Board, the Village President shall appoint three members to staggered terms of one, two or three years, subject to confirmation by the Village Board and one alternate to a term of three years. Terms will end on April 30. After the initial appointment of members to a term of one, two and three years respectively, the Village President shall annually, between the first Monday of April and the first Monday of May, appoint one member for a term of three years and one alternate for a term of three years every third year, subject to confirmation by the Village Board. At the first meeting held by the Appeals Board after the first Monday of May of each year, the members of the Appeals Board shall vote by majority to select a chair for its meetings and any appeal that come before it.
- C. The Appeals Board shall approve an official appeal form, establishing filing procedures, a hearing schedule and deadlines for filing an appeal. A Sex Offender seeking an exemption shall complete this official form and submit it to the Village Clerk, who shall forward it to the Appeals Board. Notice in the form of an agenda shall be posted and/or published as required by law and provided to the Appeals Board.
- D. The Village elects not to be bound by Chapter 68 of the Wisconsin Statutes with respect to administrative procedure in the appeal process. The Appeals Board shall hold a hearing on each appeal to conduct an individual risk assessment in each case, during which the Appeals Board may review any pertinent information and may accept

oral and written statements from any person. The Sex Offender that filed the appeal shall appear at any hearing held, unless otherwise approved by the Appeals Board. The Appeals Board shall consider the public interests as well as the applicant's presentation and concerns, giving the applicant a reasonable opportunity to be heard. The Appeals Board shall also consider any oral, emailed, and written statements from any person at the hearing or received in advance of the hearing. The Sex Offender shall be given copies of same prior to the hearing. The Appeals Board shall consider the specific facts and circumstances of each applicant and determine whether the Sex Offender presents a threat to public safety if he or she resides at that proposed location. The Appeals Board shall consider factors which may include, but are not limited to the following:

1. Circumstances surrounding the offense.
2. Relationship of offender and victim.
3. Presence or use of force.
4. Presence of enticement.
5. Need to protect victim or similarly situated individuals.
6. Current dangerousness of the offender.
7. Proximity in time from original offense.
8. Any criminal offenses, ordinance or rule violations committed since offense including failures to register or comply with restrictions set by a bond, parole or probation.
9. Time out of incarceration.
10. Current supervision status by the Department of Corrections.
11. Counseling and treatment history.

12. Credibility of offender.
13. Remorse
14. Proximity of proposed residence to a Child Safety Zone.
15. Support network of offender near proposed Residence.
16. Alternative options for housing.

E. The Appeals Board shall decide by majority vote to grant or deny any exemption. An exemption may be unconditional or be conditional to a certain address or period of time. In the case of an approval or denial, the Appeals Board shall provide a written copy of the decision containing the reasons therein for its decision to the Village Attorney and to the Sex Offender. The decision of the Appeals Board may be appealed to the Pierce County Circuit Court by any aggrieved party within 30 days of filing of the final decision of the Village Clerk's office, a copy of which shall be mailed to the Sex Offender who appealed. The review shall be a review by certiorari and the Circuit Court may affirm or reverse the final decision, or remand to the decision maker for further proceedings consistent with the Court's decision.

a. Penalties. Any Person who violates any provision of this Section shall, upon conviction thereof, be subject to the penalty provided in Section 25.04. [Ord. 664 11/2017]

## 11.22 PROHIBITED CONDUCT OF SEX OFFENDER

### (1) Findings and Intent.

A. Findings. Repeat sex offenders, sex offenders who use physical violence or threat thereof, and sex offenders who prey on children are sex predators who present a serious threat to the public safety. Sex offenders are extremely likely to use physical violence when they offend, and many

sex offenders commit multiple offenses, have more victims that are never reported and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society great, and it justifies efforts to protect the public from such victimization. Reducing both opportunity and temptation will minimize the risk of re-offense for those Sex Offenders who in the absence of such reduction would be likely to re-commit sex offenses against children. Therefore, there is a compelling need to separate Sex Offenders from places where children congregate or play in public places.

B. Intent. It is the intent of the Village Board to protect the safety and welfare of its citizens by creating Child Safety Zones around places where children regularly gather. Sex Offenders are prohibited from establishing Residency. It is not the intent of the Village Board to impose additional punishment on Sex Offenders.

(2) Definitions. The phrase "Child Safety Zone" in this Section 11.22 means an area within 250 feet of any school, park, child care facility, licensed pursuant to Wis. Stat. §48.65, or certified under Wis. Stat. §48.65(1) or that is established or contracted for under Wis. Stat. §120.123(4), group home as defined in Wis. Stat. §48.02(7), or youth center within the Village of Ellsworth.

To the extent not otherwise delineated above, any facility for children [which means a public or private school or group home, as defined in Wis. Stat. §48.02(7); a residential care center for children and youth, as defined in Wis. Stat. §48.02(15d); a shelter care facility, as defined in Wis. Stat. §48.02(17); a foster home, as defined in Wis. Stat. §48.02(6); a treatment foster home, as defined in Wis. Stat. §48.02(17q); a daycare provider certified under Wis. Stat. §48.651; a youth center, as defined in Wis. Stat. §961.01(22)].

(3) No Presence Areas. No Designated Sex Offender shall enter upon or be present in a Child Safety Zone.

- (4) Holiday Events Prohibited. It is unlawful for any Sex Offender to participate in a holiday event involving children unless the Offender is the parent or guardian of the children involved, and no non-familial children are present. Participation is defined as actively taking part in the event and shall include, but is not limited to, distributing candy or other items to children on Halloween, wearing a Santa Claus costume, or wearing an Easter Bunny costume. Where a Sex Offender accompanies his/her children to a Holiday Event, but does not actively participate in it (such as distributing candy or other items), that shall not be considered participation in the event; and, further, if the event takes place in a Child Safety Zone the Offender may be present with his/her children notwithstanding the prohibition in sub. 3 above.
- (5) Exceptions. A Sex Offender may be present in a Child Safety Zone under any of the conditions set forth in Section 11.21(3), as well as the following instances:
- A. The Sex Offender is accompanied at all times by a minor child of which they have legal custody and the Department of Corrections or Department of Human Services has authorized the contact, as required by the conditions of the person's release.
  - B. The Sex Offender's presence on the property of a school is for the purpose of discussing the education of a minor child of which they have legal custody, and their presence is with the prior knowledge and consent of the school official with whom the person is meeting and the Department of Corrections or Department of Human Services has authorized the visit, as required by the conditions of the person's release.
  - C. The Child Safety Zone also serves a use lawfully attended by a Sex Offender's natural or adopted child(ren) or natural or adopted grandchild(ren), which child's use reasonably requires the attendance upon the property of the Sex Offender as the child's parent or grandparent, subject to the following

conditions:

- i. Entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and
  - ii. Written advance notice is given by the Sex Offender to an individual in charge of the use upon the property, and approval from the individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return, of the attendance by the Sex Offender.
- D. The Child Safety Zone also serves as a polling location in a local, State, or Federal election, subject to the following conditions:
- i. The Sex Offender is eligible to vote;
  - ii. The designated polling place for the Sex Offender is an enumerated use; and
  - iii. The Sex Offender enters the polling place property and proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate, and the Sex Offender vacates the property immediately after voting.
- E. The Child Safety Zone also serves as a school attended by a Sex Offender as a student, under which circumstances the Sex Offender who is a student may enter upon the property supporting the school at which he or she is enrolled, as is reasonably required for the educational purposes of the school.
- F. The Sex Offender is within a motor vehicle in transit.
- G. The Sex Offender is transporting his/her natural or adopted child(ren) or natural or adopted grandchild(ren) to or from school or a daycare facility, provided there is prior knowledge and consent of the school or facility and the Department of Corrections or

Department of Health Services has authorized the transport as required by the condition of the person's release.

(6) Severability. Should any section, paragraph, sentence, clause or phrase of this section be declared unconstitutional or invalid, or be repealed, it shall not affect the validity of this Section as a whole, or any part thereof, other than the part so declared to be invalid or repealed.

(7) Penalties. Any person who violates any provision of this Section shall, upon conviction thereof, be subject to the penalty provided in Section 25.04. [Ord. 664 11/2017]

11.50

PENALTY. Unless otherwise provided in any Section of this Chapter or any order, rule or regulation made hereunder shall be subject to a penalty as provided in sec.25.04 of this Code. [Ord. 628 11/2012]