

**CHAPTER 106  
MORALS AND WELFARE**

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**106-1. Disorderly Conduct.** 1. PROHIBITED. It shall be unlawful for any person to engage, in a public or private place, in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance.

2. CONSTRUCTION. Subsection 1 shall not be construed to apply to, and no person may be charged with a violation of sub. 1 solely on account of, behavior limited to loading, carrying, or going armed with a firearm, without regard to whether the firearm is loaded or is concealed or openly carried, except when other facts and circumstances indicate a criminal or malicious intent.

3. PENALTIES. Any person violating this section shall upon conviction forfeit not more than \$500 or, upon default of payment thereof, be imprisoned in the house of correction of Milwaukee county for not more than 20 days; and, for offenses occurring between the hours of 8:00 p.m. and 5:00 a.m. upon a street designated as a cruising area under s. 101-20.5, including the land within the street lines whether or not improved, shall be fined not less than \$200 nor more than \$1,000 and in default of payment shall be imprisoned as provided by law. In lieu of paying a forfeiture, any person violating this section may be ordered to perform community service work, in accordance with s. 800.09, Wis. Stats.

**106-1.1. Aggressive Panhandling.**

1. DEFINITIONS. a. "Aggressive behavior" means engaging in any conduct with the intention of intimidating another person into giving away money or goods, including but not limited to, intentionally approaching, speaking to or following a person in a manner that would cause a reasonable person to fear imminent physical injury or the imminent commission of a criminal act upon the person or upon the property in the person's immediate possession; intentionally touching another person without consent; or intentionally blocking or interfering with the free passage of a person.

b. "Panhandling" means begging, soliciting, or asking for any item of value;

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attempting to sell or obtain compensation for an item or service for an amount that is at least twice its value, or an item or service that is already offered or available at no charge to the general public; or attempting to sell or obtain compensation for an item or service under circumstances that would lead a reasonable person to conclude that the payment is in substance a donation.

**2. PROHIBITED.** It shall be unlawful for any person to engage in the act of panhandling when either the panhandler or the person being solicited is located at any of the following locations:

- a-1. At a bus stop.
- a-2. In any public transportation vehicle or public transportation facility.
- a-3. In a vehicle which is parked or stopped on a public street or alley.
- a-4. In a sidewalk café.
- a-5. Within 20 feet in any direction from an automatic teller machine or entrance to a bank.
- b. It shall be unlawful for any person to engage in the act of aggressive panhandling at any location within the city.

**3. PENALTY.** Any person violating this section shall upon conviction forfeit not more than \$25, or in lieu of paying the forfeiture perform community service work, in accordance with s. 800.09, Wis. Stats.

### 106-1.8. Public Drinking and Possession of Alcohol Beverages.

**1. PROHIBITED.** Except as provided in sub. 2, it shall be unlawful for any person to consume any alcohol beverage or possess on his or her person, any bottle or receptacle containing alcohol beverages if the bottle has been opened, the seal broken or the contents of the bottle or receptacle have been partially removed upon any public alley, highway, pedestrian mall, sidewalk, or street within the limits of the city, including upon or within any commercial quadricycle as defined in s. 100-3-13.5 except as permitted in s. 100-50-12-k. Public events for which a permit has been issued under s. 105-55.5 to barricade and occupy the public right of way are exempt from this section.

**2. REGULATION OF COMMERCIAL QUADRICYCLES.** a. No driver of a commercial quadricycle, as defined in s. 340.01(8m), Wis. Stats., may consume alcohol while the commercial quadricycle is occupied by passengers.

b. No person may drive a commercial quadricycle while the person has an alcohol concentration of more than 0.02.

c. No person may drive a commercial quadricycle on which any alcohol beverages other than fermented malt beverages are carried or consumed or on which any alcohol beverages are

sold, including delivery on the commercial quadricycle of alcohol beverages previously sold by a caterer.

d. No person may possess on, or carry onto, a commercial quadricycle more than 36 fluid ounces of fermented malt beverages.

e. No person convicted of driving a commercial quadricycle in violation of any provision of pars. a to d shall subsequently drive a commercial quadricycle within the city.

f. No person may drive a commercial quadricycle occupied by passengers after 10:30 p.m.

**3. PENALTIES.** a. Any person who violates sub. 1 shall upon conviction be subject to a forfeiture of not less than \$50 nor more than \$250, together with the costs and disbursements of prosecution and upon default of payment thereof may be imprisoned as provided by law; and, further, any person who violates sub. 1 between the hours of 8:00 p.m. and 5:00 a.m. upon a street designated as a cruising area under s. 101-20.5, including the land within the street lines whether or not improved, shall be subject to a forfeiture of not less than \$100 nor more than \$500, together with the costs and disbursements of prosecution and upon default thereof may be imprisoned as provided by law.

b. b-1. Any person who violates any provision of sub. 2-a to d shall upon conviction be subject to a forfeiture of not less than \$200 nor more than \$500, together with the costs and disbursements of prosecution and upon default of payment thereof shall be imprisoned as provided by law; and, further, any person who violates sub. 2 between the hours of 8:00 p.m. and 5:00 a.m. upon a street designated as a cruising area under s. 101-20.5, including the land within the street lines whether or not improved, shall be subject to a forfeiture of not less than \$350 nor more than \$500, together with the costs and disbursements of prosecution and upon default thereof may be imprisoned as provided by law.

b-2. Any person who violates sub. 2-e shall upon conviction be subject to a forfeiture of not less than \$1,000 nor more than \$2,000 and upon default of payment thereof may be imprisoned as provided by law.

### 106-2.1. Drinking Upon Public Parking Structures and Public Parking Surface Lots.

**1. PROHIBITED.** It shall be unlawful for any person to consume any alcohol beverage or possess on his or her person any bottle or receptacle containing alcohol beverages if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed

while upon any public parking structure or public parking surface lot within the limits of the city.

**1.5. EXCEPTION.** The provisions of sub. 1 shall not apply to:

a. American Family Field parking surface lots during sporting events and concerts.

b. Any temporary extension of a class "B" tavern licensed premises for special events granted by the common council as provided in s. 90-4-7.8.

c. Bona fide clubs, organized labor unions, county or local fair associations, or agricultural societies, churches, lodges or societies granted a Class "B" special license under the provisions of s. 90-4-7.

d. Churches, charitable and educational societies or associations, and other nonprofit Class "B" tavern licensees or Class "B" fermented malt beverage licensees provided, however, that the city clerk may require proof of nonprofit status, whether for temporary extension to public parking structures and public parking surface lots under s. 90-4-7.8 or for inclusion of public parking structures and public parking surface lots within the floor plan submitted and in the license application under s. 90-5-1-c.

e. Commercial quadricycles if the locations and times when consumption of fermented malt beverages is specified in the plan of operation of the commercial quadricycle approved by the licensing committee as provided in s. 100-50.

f. A waiver granted by the common council by resolution from the prohibition under sub. 1 for certain special events.

**2. DEFINITIONS.** In this section:

a. "Public parking structure" means a building enclosure or garage above or under the ground, or any portion thereof, in which automobiles or motor vehicles may be parked, stored, housed or kept, and open to public use with or without charge.

b. "Public parking surface lot" means 5 or more ground level parking spaces, or any portion thereof, not located in a structure, upon which automobiles or motor vehicles may be parked, stored, housed or kept, and open to public use with or without charge.

c. "Special event" means any planned extraordinary occurrence on a public parking structure or public parking surface lot, sponsored or authorized by the owner or management of the structure or lot, including but not limited to festivals, block parties and tailgate parties.

**3. PENALTY.** Any person who violates this section shall, upon being found guilty thereof,

be subject to a forfeiture of not less than \$50 nor more than \$250, together with the costs and disbursements of prosecution, and upon default of payment thereof, shall be imprisoned in the county jail or house of correction of Milwaukee county until such time as costs and disbursements are paid, such imprisonment not to exceed 10 days.

**106-2.5. Water Tower Park Curfew.**

**1. RESTRICTIONS.** No person shall enter or remain in the area known as Water Tower Park bounded by E. North Ave., E. Wyoming Pl., N. Lake Dr. and N. Terrace Ave. between the hours of 10 p.m. and 7 a.m. Appropriate signs of a properly aesthetic nature shall be so placed as to give the public notice of the foregoing restrictions.

**2. PENALTY.** Any person violating this section shall be subject to a forfeiture of not less than \$1 nor more than \$200 together with the costs of prosecution, and upon default of payment thereof be confined in the county jail or house of correction for a period not to exceed 90 days or until such fine and costs are paid.

**106-3. Places of Prostitution.** Every person or persons who shall keep a place of prostitution or who grants the use or allows the continued use of a place of prostitution shall be fined not less than \$100 and not more than \$500, and any person who enters or remains in any place of prostitution with intent to have nonmarital sexual intercourse or to commit an act of sexual perversion as defined by ch. 944, Wis. Stats., and any acts amendatory thereof and supplementary thereto shall be fined not more than \$100.

**106-4. Leasing Building for Prostitution.** All persons are prohibited from leasing or letting, either as landlord or agent of the landlord, or agent of the tenant, or as landlord through any agent or subagent, any house, room or other premises in the city to be used for the purpose of prostitution or lewdness. Any person violating this section shall upon conviction thereof be fined not less than \$50 nor more than \$500.

**106-5. Indecent Exposure. 1. DEFINITION.** In this section, "intimate part" means the anus, genitals or pubic area of a person or the areola of the female breast.

**2. PROHIBITION; PENALTIES.** Any person who publicly and indecently exposes an intimate part of his or her body shall upon conviction be punished by a fine of not less than \$50 nor more than \$250 and the costs of

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prosecution; and, further, any person who violates this section between the hours of 8:00 p.m. and 5:00 a.m. upon a street designated as a cruising area under s. 101-20.5, including the land within the street lines whether or not improved, shall be punished by a fine of not less than \$150 nor more than \$500 and the costs of prosecution.

**3. EXCEPTIONS.** a. Subsection 2 does not apply to a mother's breast-feeding of her child.

b. Subsection 2 does not apply to any performance having serious artistic, literary, scientific or educational value, if taken as a whole.

**106-6. Exhibiting Stud Horse or Bull.** No person shall indecently exhibit any stud horse or bull, or let any such horse to any mare, or any bull to any cow or cows within the limits of this city, unless in some enclosed place out of public view, under a penalty of not less than \$10 nor more than \$50 for each offense.

### 106-7. Obscene Materials or Performances.

**1. DEFINITIONS.** a. "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual 3-dimensional obscene device.

b. "Obscene" means material or a performance that:

b-1. The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex.

b-2. Depicts or describes:

b-2-a. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, fellatio, cunnilingus and sexual bestiality; or

b-2-b. Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

b-3. Taken as a whole, lacks serious literary, artistic, political or scientific value.

c. "Obscene device" means a device, including a dildo or artificial vagina, designed and marketed as useful primarily for the stimulation of human genital organs.

d. "Patently offensive" means so offensive on its face as to affront current community standards of decency.

e. "Performance" means a play, motion picture, dance or other exhibition performed before an audience.

f. "Promote" means to manufacture, issue, sell, give, provide, lend, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.

**2. UNLAWFUL ACTS.** a. A person commits a violation under this section if, knowing its content and character, he or she:

a-1. Promotes or possesses with intent to promote any obscene material or obscene device; or

a-2. Produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

b. This section does not apply to a person who possesses or distributes obscene material or obscene devices or participates in conduct otherwise prescribed by this section when the possession, participation or conduct occurs in the course of law enforcement activities.

**3. PENALTY.** Any person who violates this section shall forfeit not less than \$500, nor more than \$2,000 together with the costs of prosecution for each offense. In default of payment of any forfeiture and cost of prosecution, the violator shall be imprisoned in the house of correction or the county jail until such forfeiture or costs are paid. Such imprisonment shall not exceed 60 days.

**106-8. Harassing or Obscene Phone Calls and Messaging.** Whoever does any of the following, by means of telephone calls or text messaging originating within or received within the limits of the city, may be fined not less than \$100 nor more than \$500 or upon default of payment shall be imprisoned as provided by law:

**1.** Makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent.

**2.** Makes a telephone call or sends a text message with the intent to abuse, threaten or harass any person receiving the call or text message.

**3.** Makes or causes the telephone of another repeatedly or continuously to ring, with

intent to harass any person at the called number or numbers.

4. Makes repeated telephone calls or sends repeated text messages solely to harass any person receiving the calls or text messages

5. Knowingly permits any telephone under his control to be used for any purpose prohibited by this section.

6. In conspiracy or concerted action with other persons, makes repeated calls or simultaneous calls solely to harass any person at the called number.

**106-9.5. Exposing Minors to Harmful Materials.**

1. DEFINITIONS. For purposes of interpretation in enforcement of this section, the definitions contained in sub. 1 shall apply. In addition, as used in this section:

a. "Knowingly" means having general knowledge of, or reason to know, or belief or ground for belief which warrants further inspection or inquiry of both:

a-1. The character and content of any material described herein which is reasonably susceptible of examination by the defendant.

a-2. The age of a minor.

b. "Minor" means any person less than 18 years old.

2. UNLAWFUL. It shall be unlawful for any person knowingly to distribute pornographic material to a minor.

3. VIOLATIONS. It shall be unlawful for any person to exhibit a pornographic performance to a minor. It shall be a violation of this section if any person for a monetary consideration or other valuable commodity or service knowingly:

a. Exhibits a pornographic performance to the minor; or

b. Sells an admission ticket or other means to gain entrance to a pornographic performance to the minor; or

c. Permits the admission of the minor to premises whereon there is exhibited a pornographic performance.

4. PENALTY. Any person who shall violate this section shall forfeit not less than \$200 nor more than \$1,000 together with the costs of prosecution. In default of payment of any forfeiture and costs of prosecution, the violator shall be imprisoned in the house of correction or the county jail until such forfeiture and costs are paid and such imprisonment shall not exceed 90 days.

**106-9.6. Display of Material Harmful to Minors and Marital Aid Devices. 1. DEFINITIONS.** In this section:

a. "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct or sexual excitement when it:

a-1. Predominantly appeals to the prurient, shameful or morbid interests of minors in sex.

a-2. Is patently offensive to contemporary standards in the adult community as a whole with respect to what is suitable sexual material for minors.

a-3. Taken as a whole, lacks serious literary, artistic, political or scientific value.

b. "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

b-1. The character and content of any material which is reasonably susceptible of examination.

b-2. The age of the minor.

c. "Marital aid device" means a device designed or marketed primarily for use in achieving the sexual stimulation or arousal of human genital organs, including a dildo or artificial vagina.

d. "Material" means any book, cassette, magazine, motion picture film, newspaper, pamphlet, poster, print, picture, slide, figure, image, description, record, recording tape or video tape.

e. "Minor" means any person under the age of 18 years.

f. "Nudity" means: the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state.

g. "Person" means any individual, partnership, association, corporation or other legal entity of any kind.

h. "Sexual conduct" includes any of the following depicted sexual conduct:

h-1. Any act of sexual intercourse, actual or simulated, including genital, anal-genital or oral-genital intercourse, whether between human beings or between a human being and an animal.

h-2. Sadomasochistic abuse meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound

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or otherwise physically restricted on the part of one so clothed.

h-3. Masturbation or lewd exhibitions of the genitals, including any explicit, close-up representation of a human genital organ.

h-4. Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

h-5. An act of sexual assault where physical violence or drugs are employed to overcome the will of or achieve the consent of a person to an act of sexual conduct and the effects or results of the violence or drugs are shown.

i. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

2. PROHIBITED DISPLAY. No person having custody, control or supervision of any commercial establishment may knowingly display marital aid devices, or any material whose cover, covers or packaging, standing alone is harmful to minors, in such a way that minors, as part of the invited general public, will be exposed to view the material or in such a way that the devices or material are easily visible from a public thoroughfare or sidewalk. A person shall not be deemed to have displayed material harmful to minors if those portions of the cover, covers or packaging containing such material harmful to minors are blocked from view by an opaque screen, border or cover. An honest mistake regarding the age of a minor shall constitute an excuse from liability if the defendant made a reasonable bona fide attempt to ascertain the true age of the minor.

3. PENALTY. Any person who violates this section shall, upon conviction, forfeit not more than \$500, together with the costs of prosecution, or, in default of payment may be imprisoned in the county jail or house of correction for not more than 30 days. Each day on which a violation continues shall be determined a separate and distinct offense.

**106-11. Mashing Prohibited.** Any person who shall improperly accost, ogle, insult, follow, pursue, lay hands on or otherwise molest another person theretofore to him or her unacquainted, shall upon conviction forfeit no more than \$500, or in default of payment may be imprisoned in the house of correction of Milwaukee county for not more than

20 days, or until the fine and costs are paid. In lieu of paying a forfeiture, any person violating this section may be ordered to perform community service work, in accordance with s. 800.09, Wis. Stats.

**106-12. Bathing.** 1. SWIMMING PLACES. No person shall be allowed to bathe or swim in the public waters of the city, except from public or private bath houses or swimming schools; provided, that this shall not apply to the waters of Lake Michigan opposite Bradford Avenue, Pennsylvania Avenue and Texas Avenue.

2. BATHING SUIT REGULATIONS. No person shall bathe or swim in the public waters of the city unless clad in proper and decent bathing suits. No person shall appear in the public highways of the city outside of bathing establishments clad in bathing costumes, unless street clothes are worn on the outside thereof.

3. BATH HOUSES. No person shall keep a bathing institution at any of the said public waters without the consent of the mayor, and then only subject to such regulations as the mayor shall prescribe.

4. PENALTY. For penalty clause, see s. 106-22.

## 106-21. Unlawful Library Acts.

1. DEFINITIONS. In this section:

a. "Library" means any city of Milwaukee public library.

b. "Library material" includes any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microform, sound recording, audiovisual materials in any format, magnetic or other tapes, electronic data processing records, artifacts or other documentary, written or printed materials, regardless of physical form or characteristics, belonging to, on loan to or otherwise in the custody of a library.

c. "Value" means the reasonable replacement cost of an item as determined by library policy.

d. "Incident location" for purposes of this section shall be 814 West Wisconsin Avenue, Milwaukee, Wisconsin.

e. "Library computer record" means any circulation, registration, catalog, image recording or any electronic record kept in the regular course of business by the library or its designee.

2. UNLAWFUL USE OF LIBRARY CARD. a. No person may:

a-1. Use, present or cause to be presented as valid any canceled, fictitious or fraudulently obtained, forged or altered library card.

a-2. Sell or lend his or her library card to any other person or knowingly permit the use thereof by another.

a-3. Represent as one's own, any library card not issued to him or her.

a-4. Permit any unlawful use of a library card issued to him or her.

b. Whenever a library card which belongs to another or appears to be altered or fraudulently obtained is displayed to a law enforcement officer or library employee or agent, that person shall take possession of the card and return it to the library.

**3. FAILURE TO RETURN LIBRARY MATERIAL.** a. After notice has been sent to the last known address, no person may fail to return overdue, borrowed library material.

b. Each individual item borrowed may constitute a separate violation of this section.

c. Refusal to accept or failure to receive an overdue notice mailed by first class mail to such person's last-known address shall not be a defense to a violation of this section. If the person has changed his or her address and fails to notify the Milwaukee public library as required, failure to receive the overdue notice shall not be a defense.

d. No person may fail to return, relinquish or produce library materials in his or her possession regardless of due date upon demand by a police officer, agent or employee of the library.

**4. THEFT OF LIBRARY MATERIAL.**

a. Whoever intentionally takes and carries away, transfers, conceals or retains possession of any library material with a value of \$500 or less without the consent of a library official, agent or employee and with intent to deprive the library of possession of the material may be penalized as provided in sub. 8-b.

b. The concealment of library material beyond the last station for borrowing library material in a library or possession of library material from which security tags or property identification markings have been removed is evidence of intent to deprive the library of possession of the material. The discovery of library material which has not been borrowed in accordance with the library's procedures or taken with consent of a library official, agent or employee and which is concealed upon the person or among the belongings of the person or concealed by a

person upon the person or among the belongings of another is evidence of intentional concealment on the part of the person so concealing the material.

c. An official or adult employee or agent of a library who has probable cause for believing that a person has violated this subsection in his or her presence may detain the person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer, or to the person's parent or guardian in the case of a minor.

The detained person shall be promptly informed of the purpose for the detention and be permitted to make phone calls, but shall not be interrogated or searched against his or her will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. Compliance with this subsection entitles the official, agent or employee effecting the detention to the same defense in any action as is available to a peace officer making an arrest in the line of duty.

**5. FRAUDULENT REGISTRATION AND USE OF LIBRARY MATERIALS.** a. No person shall directly or indirectly make or cause to be made any false statement regarding the person's own identity or residence or the identity or residence of another person when the person knows his or her statement to be false and when the person intends that false statement to be relied upon for any person's registration for or use of library materials.

b. Evidence that a person has the intent required under par. a is shown by the person's doing any of the following:

b-1. Directly or indirectly giving false or misleading information on a library registration form in any manner.

b-2. Presenting false or fictitious credentials for the purpose of obtaining a library card or the use of library materials.

b-3. Using a library card that was obtained in violation of this subsection to check out library materials.

**6. ALTERATION OF IDENTIFICATION MARKINGS.** a. No person shall remove, alter or conceal all or any part of an identification mark, label, stamp, writing or attachment that identifies any item or material as the property of the library unless authorized library personnel has marked the item or material as "DISCARDED".

b. No person shall possess, transport, display for sale, sell, trade or retain for personal use any library item or material on which identification markings have been altered as prohibited under par. a

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c. No person shall possess, transport, display for sale, sell or trade a discard stamp or any other paraphernalia designed to alter identification markings on library materials.

7. ALTERATION OF COMPUTER RECORD. No person may alter a library computer record with the result that such alteration destroys, masks, alters or otherwise makes the record untrue or unreliable.

8. PENALTY. a. A person who violates subs. 2, 3, 5 or 6 may be required to forfeit no more than \$1,000.

b. A person who violates subs. 4 and 7 may be required to forfeit not more than \$1,500.

c. A person in default of a forfeiture under pars. a or b may be imprisoned in the county jail or house of correction for no more than 60 days, until such forfeiture costs are paid.

9. CITATIONS. a. Citations may be issued for all violations of this section with or without prior order or notice by a peace officer.

b. Citations may be issued by the library's investigator or other designated agent for any violation of subs. 2, 3, 5 or 6.

c. Citations issued for violation of sub. 3 shall, for administrative purposes, refer to the incident location defined in this section.

d. The stipulation, forfeiture and court procedure as set forth in s. 50-25 shall apply for any citation issued in accordance with this section.

**106-22. Penalty, General.** Any person violating any of the provisions of this chapter, for the violation of which no penalty is in this chapter specified, shall be punished by a fine of not less than \$1 nor more than \$100.

**106-23. Loitering of Minors (Curfew Hours).** It shall be unlawful for any person under the age of 17 years to congregate, loiter, wander, stroll, stand or play in or upon the public streets, highways, roads, alleys, parks, public buildings, places of amusement and entertainment, places of employment, vacant lots or any public places in the city either on foot or in or upon any conveyance being driven or parked thereon, between the hours of 10 p.m. and 5 a.m. of the following day, official city time, Sunday through Thursday and between 11 p.m. and 5 a.m. Friday and Saturday, from September 1 through May 31; and between 11 p.m. and 5 a.m. from June 1 through August 31.

1. EXCEPTIONS. This section shall not apply where the actor was accompanied by his or her parent, guardian or other adult person having his or her care, custody or control, or where

the actor was exercising first amendment rights protected by the United States constitution or the Wisconsin constitution, including freedom of speech, the free exercise of religion, and the right of assembly. Unless flight by the actor or other circumstances makes it impracticable, a peace officer shall, prior to issuing a citation for an offense under this section, afford the actor an opportunity to explain his or her reasons for being present in the public place. A peace officer shall not issue a citation for an offense under this section unless the officer reasonably believes that an offense has occurred, and that none of the exceptions described in this subsection apply.

2. RESPONSIBILITY OF PARENTS. It shall be unlawful for the parent, guardian or other adult person having the care and custody of a person under the age of 17 years to suffer or permit or by inefficient control to allow such person to congregate, loiter, wander, stroll, stand or play in or upon the public streets, highways, roads, alleys, parks, public buildings, places of amusement and entertainment, places of employment, vacant lots or any public places in the city between the hours of 10 p.m. and 5 a.m. of the following day, official city time, Sunday through Thursday, and between 11 p.m. and 5 a.m. Friday and Saturday, from September 1 through May 31; and between 11 p.m. and 5 a.m. from June 1 through August 31, unless one of the exceptions described in sub. 1 applies; provided that any parent, guardian or other adult person who shall have made a missing person notification to the police department shall not be considered to have suffered or permitted any person to be in violation of this section.

3. RESPONSIBILITY OF OPERATORS. It shall be unlawful for any person, firm or corporation operating places of amusement or entertainment, or any agent, servant or employee of any person, firm or corporation to permit any person under the age of 17 years to enter or remain in such places of amusement or entertainment during the hours prohibited under this section, unless one of the exceptions described in sub. 1 applies.

4. RESPONSIBILITY OF HOTELS, ETC. It shall be unlawful for any person, firm or corporation operating a hotel, motel, lodging or rooming house, or any agent or servant or employee of such person, firm or corporation operating a hotel, motel, lodging or rooming house, to permit any person under the age of 18 years to visit, loiter, idle, wander or stroll in any portion of such hotel, motel, lodging or rooming house between the hours of 10 p.m. and 7 a.m. of

the following day, official city time; provided, however, that this section does not apply when one of the exceptions described in sub. 1 applies.

**5. PENALTY.** Any person, firm or corporation violating this section upon conviction shall forfeit not less than \$100 nor more than \$200, and in default of payment thereof be confined in the county house of correction not more than 8 days.

**106-23.1. Truancy. 1. DEFINITIONS.** In this section: a. "Acceptable excuse" means an excuse described under ss. 118.15 and 118.16(4), Wis. Stats.

b. "Habitual truant" means any pupil who is truant for part or all of 5 or more days in a school semester.

c. "Truant" means a school pupil who is at least 12 years of age who is absent from school without an acceptable excuse for part or all of any day in which school is held during a school semester.

**2. PROHIBITION.** It is a violation of this section for any person under 18 years of age to be truant or a habitual truant.

**3. PENALTIES.** a. Any truant may be subject to any or all of the following:

a-1. An order to attend school.

a-2. A forfeiture of not more than \$50, plus court costs, for a first violation.

a-3. A forfeiture of not more than \$100, plus court costs, for a second or subsequent violation committed within 12 months of the commission of a previous violation, subject to a maximum cumulative forfeiture amount of not more than \$500 for all violations committed during a school semester.

a-4. An order to pay court costs, subject to s. 938.37, Wis. Stats.

b. Any habitual truant may be subject to any or all of the following:

b-1. Suspension of his or her operating privileges for not less than 30 days nor more than one year. The court shall immediately take possession of any suspended license and forward it to the Wisconsin department of transportation together with a notice stating the reason for and the duration of the suspension.

b-2. An order to participate in counseling or a supervised work program or other community service work as described in s. 938.342(1g)(b), Wis. Stats.

b-3. An order for the department of workforce development to revoke, under s. 103.72,

Wis. Stats., a permit issued under s. 103.70, Wis. Stats., authorizing the employment of the habitual truant.

b-4. An order to attend school.

b-5. A forfeiture of not more than \$500, plus court costs, subject to s. 938.37, Wis. Stats.

b-6. An order placing the habitual truant under formal or informal supervision as described in s. 938.34(2), Wis. Stats., for up to one year.

b-7. An order for the habitual truant's parent, guardian or legal custodian to participate in counseling or to attend school with the habitual truant, or both.

c. All or part of any forfeiture assessed pursuant to this section may be assessed against the truant or habitual truant, his or her parent or guardian, or both.

**106-23.2. Contributing to the Delinquency of Minors.** Any parent or legal guardian having legal custody of a minor under the age of 18 years who, through his or her negligence, laxity or disregard of the morals, health and welfare of the minor, has contributed to the delinquency of the minor, or any person who shall contribute to the delinquency of any minor shall be punished by a fine of not less than \$25 nor more than \$500, or in default thereof, by imprisonment in the county jail or house of correction until such fine, including costs and disbursements, is paid, but not to exceed 60 days.

**106-23.3. Contributing to Truancy. 1.** In this section "truancy" has the same meaning as defined under s. 118.16(1)(c), Wis. Stats.

**2.** Except as provided in sub. 4, no person 18 years of age or older shall knowingly encourage or contribute to the truancy of a minor under the age of 18 years.

**3.** An act or omission contributes to the truancy of a minor, whether or not the minor is adjudged to be in need of protection or services, if the natural and probable consequences of that act or omission would be to cause the minor to be truant.

**4.** Subsection 2 does not apply to a person who has under his or her control a truant minor who has been sanctioned through the state Learnfare program under s. 49.50(7)(h), Wis. Stats.

**5.** A person who is convicted of violating this section shall forfeit not less than \$25 nor more than \$500, and in default of payment

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shall be imprisoned in the house of correction or the county jail for not less than one day nor more than 20 days.

### **106-23.4. Newscarrrier Regulations (Minors).**

1. UNDER THE AGE OF 12 YEARS. Except as provided in s. 103.23(2), Wis. Stats., no child under the age of 12 years shall be allowed to hawk or sell newspapers or other articles upon the streets of the city.

2. PENALTY. Parents and guardians, or those having children in their charge, are hereby required to see that the provisions of this section are carried out and, in case of failure to do so, are made subject to a fine of not less than \$1 nor more than \$10, or to imprisonment in the house of correction of Milwaukee county for not less than 5 days nor more than 15 days in the discretion of the court.

### **106-23.5. Parental Responsibility for Misconduct of Juveniles.**

1. PURPOSE. The purpose of this section is to require proper supervision on the part of custodial parents in order to reduce the number of ordinance violations by juveniles from occurring.

2. DEFINITIONS. In this section:

a. "Custodial parent" means a parent or legal guardian of a juvenile who has custody of the juvenile.

b. "Custody" means either physical custody of a juvenile under a court order under s. 767.23 or 767.24, Wis. Stats., custody of a juvenile under a stipulation under s. 767.10, Wis. Stats., or actual physical custody of the juvenile. Custody does not include legal custody, as defined under s. 48.02(12), Wis. Stats., by an agency or a person other than a juvenile's birth or adoptive parent. In determining which parent has custody of a juvenile for purposes of this section, the court shall consider which parent had responsibility for caring for and supervising the juvenile at the times that the juvenile's ordinance violations occurred.

c. "Juvenile" means any person less than 17 years of age.

d. "Parental responsibility" means a custodial parent of a juvenile residing with such custodial parent shall meet his or her duty to supervise the juvenile.

3. PROHIBITED CONDUCT.

a. It shall be unlawful for the custodial parent of a juvenile to not properly supervise the

juvenile. Any custodial parent of a juvenile who is convicted of ordinance violations 2 times within a 6-month period or 3 or more times within a 12-month period is guilty of failing to properly supervise the juvenile where the violations were a foreseeable consequence of the breach of the duty, in that:

a-1. The parent aided or abetted the juvenile during an act forming the basis of a violation; or

a-2. The parent acted or failed to act to impose reasonable supervisory controls on the juvenile that made the violation foreseeable.

b. The 6 and 12-month periods shall be measured from the date of the first conviction. Adjudication in the court that the juvenile has violated an ordinance shall bar a juvenile's custodial parent from denying that the juvenile committed the violation.

4. DEFENSE OF PARENT. The following shall be among the defenses to a violation of sub. 3 where proven by the parent by clear and convincing evidence:

a. The parent was not legally responsible for the supervision of the juvenile at the times the juvenile's ordinance violations occurred.

b. The parent had a physical or mental disability or incompetence rendering him or her incapable of supervising the juvenile at the times the juvenile's ordinance violations occurred.

c. The parent had reported to the appropriate authorities the juvenile's ordinance violations at the times the violations occurred or as soon as the parent learned of the violations.

d. The parent is the victim of the acts underlying the juvenile's ordinance violations.

e. A competent physician or licensed psychologist had diagnosed the juvenile before the times the juvenile's ordinance violations occurred as suffering from a mental disorder that renders parental supervision and control ineffective.

f. The parent can provide specific evidence of on-going participation in or recent completion of parenting classes, family therapy, group counseling or AODA counseling which includes the parent or family.

5. PENALTY. A person who is convicted of violating sub. 3 shall forfeit not less than \$200 nor more than \$400, and in default of payment thereof shall be imprisoned in the house

of correction or the county jail not more than 16 days.

**106-30. Sale of Tobacco to Persons Under 18.**

**1. DEFINITIONS.** In this section:

a. "Cigarette" means any roll of tobacco wrapped in paper or any substance other than tobacco.

b. "Nicotine products" means a product that contains nicotine and is not any of the following:

b-1. A tobacco product.

b-2. A cigarette.

b-3. A product that has been approved by the U.S. food and drug administration for sale as a smoking cessation product or for another medical purpose and is being marketed and sold solely for such an approved purpose.

c. "Person" means any individual, partnership, firm, organization, association, corporation, trustee or other legal entity of any kind.

d. "Retailer" means any person licensed under s. 134.65(1), Wis. Stats.

e. "Tobacco products" means: cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not include cigarettes, as defined under s. 139.30(1m), Wis. Stats.

f. "Vending machine" means any mechanical device that automatically dispenses cigarettes or tobacco products when money or tokens are deposited in the device in payment for cigarettes or tobacco products.

**2. PROHIBITION.** a. No retailer may sell or give to any person under the age of 18 any cigarette, nicotine product, or tobacco product at any time, except as provided in s. 254.92(2)(a), Wis. Stats.

b. No retailer may provide for nominal or no consideration cigarettes, nicotine products, or tobacco products to any person except in a place where no person younger than 18 years of age is present or permitted to enter unless the

person who is younger than 18 years of age is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.

**3. REGULATIONS.** a. The owner or operator of a premise which sells cigarettes or tobacco products shall post a sign in the immediate area where those products are sold stating that the sale of any cigarette or tobacco products to a person under the age of 18 is unlawful under this section and ss. 134.66 and 254.92, Wis. Stats.

b. A retailer or vending machine operator may not sell cigarettes or tobacco products from a vending machine, except in a facility where individuals under the age of 18 are not present or permitted at any time, as provided in s. 21 CFR Part 1140.

c. No retailer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under s. 139.32(1), Wis. Stats.

**4. DEFENSE OF RETAILER.** Proof of all the following facts by a retailer who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution for a violation of sub. 2-a:

a. That the purchaser falsely represented that he or she had attained the age of 18 and presented an identification card.

b. That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the age of 18.

c. That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and in the belief that the purchaser had attained the age of 18.

**5. PENALTIES.** a. Any person convicted of violating this section, except sub.3-a, shall be subject to the following forfeitures:

a-1. Not more than \$500 if the person has not committed a previous violation within 12 months of the violation.

a-2. Not less than \$200 nor more than \$500 if the person has committed a previous violation within 12 months of the violation.

b. If the court finds that a person licensed under s. 84-43 committed a violation, the license of the person shall be suspended for the following periods of time:

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b-1. Not more than 3 days if the person committed a violation within 12 months after committing one previous violation.

b-2. Not less than 3 days nor more than 10 days if the person committed a violation within 12 months after committing 2 previous violations.

b-3. Not less than 15 days nor more than 30 days if the person committed the violation within 12 months after committing 3 or more previous violations.

c. Upon suspension of the license under par. b, the court shall promptly mail notice of the suspension to the Wisconsin department of revenue.

d. Any person convicted of violating sub. 3-a shall forfeit not more than \$25.

### 106-30.2. Sale of Electronic Cigarettes to Persons Under 18.

1. DEFINITIONS. In this section:

a. "Electronic smoking device" means an electronic device that can be used to deliver an inhaled dose of 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. It includes any such device whether manufactured, distributed, marketed, or sold as an electronic cigarette, commonly known as e-cigarettes; an electronic cigar; an electronic cigarillo; an electronic pipe; an electronic hookah; vape pen; or any other product name or descriptor.

b. "Electronic smoking device paraphernalia" means a cartridge, cartomizer, e-liquid, smoke juice, tip, atomizer, electronic smoking device battery, electronic smoking device charger, and any other item specifically designed for the preparation, charging, or use of electronic smoking devices. It does not include any cigarette, as defined in s. 139.30(1m) Wis. Stats., nicotine product, as defined in s. 134.66(1)(f), Wis. Stats., or tobacco products, as defined in s. 139.74(12), Wis. Stats.

c. "Person" means any individual, partnership, firm, organization, association, corporation, trustee, or other legal entity of any kind.

d. "Vending machine" means any mechanical device that automatically dispenses electronic smoking devices or electronic smoking device paraphernalia when money or tokens are deposited in the device in payment for electronic smoking devices or electronic smoking device paraphernalia.

2. PROHIBITION. a. No person may sell or give any person under the age of 18 any electronic smoking device or electronic smoking device paraphernalia at any time.

b. No person may provide for nominal or no consideration an electronic smoking device or electronic smoking device paraphernalia to any person except in a place where no person younger than 18 years of age is present or permitted to enter unless the person who is younger than 18 years of age is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.

3. REGULATIONS. a. The owner or operator of an establishment that sells electronic smoking devices or electronic smoking device paraphernalia shall post a sign in the immediate area where those products are sold stating that the sale of any electronic smoking devices or electronic smoking device paraphernalia to a person under the age of 18 is unlawful under this section.

b. A person or vending machine operator may not sell electronic smoking devices or electronic smoking device paraphernalia from a vending machine, except in an establishment where individuals under the age of 18 are not present or permitted at any time, as provided in s. 21 CFR Part 1140.

4. DEFENSE OF SELLER. Proof of all the following facts by a person who sells electronic smoking devices or electronic smoking device paraphernalia to a person under the age of 18 is a defense to any prosecution for a violation of sub. 2-a:

a. That the purchaser falsely represented that he or she had attained the age of 18 and presented an identification card.

b. That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the age of 18.

c. That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and in the belief that the purchaser had attained the age of 18.

**5. PENALTIES.** a. Any person convicted of violating this section, except sub. 3-a, shall be subject to the following forfeitures:

a-1. Not more than \$500 if the person has not committed a previous violation within 12 months of the violation.

a-2. Not less than \$200 nor more than \$500 if the person has committed a previous violation within 12 months of the violation.

b. Any person convicted of violating sub. 3-a shall forfeit not more than \$25.

**106-30.5. Purchase and Possession of Cigarettes and Tobacco Products by Persons Under the Age of 18.**

**1. FALSE REPRESENTATION ILLEGAL.** No person under 18 years of age may falsely represent his or her age for the purpose of receiving any cigarette or tobacco product.

**2. EXCEPTION.** No person under 18 years of age may purchase or possess cigarettes or tobacco product except as follows:

a. A person under 18 years of age may purchase or possess cigarettes or tobacco products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer.

b. A person under 18 years of age, but not under 15 years of age, may purchase, attempt to purchase or possess cigarettes or tobacco products in the course of his or her participation in an investigation under s. 254.916, Wis. Stats., that is conducted in accordance with sub. 3 and s. 254.916(3), Wis. Stats.

**3. INVESTIGATION EXCEPTION.** With the permission of his or her parent or guardian, a person under the age of 18 years, but not under 15 years of age may buy, attempt to buy or possess any cigarette or tobacco product if all of the following are true:

a. The person commits the act for the purpose of conducting an investigation under s. 254.916, Wis. Stats.

b. The person is directly supervised during the conducting of the investigation by an adult employee of a governmental regulatory authority.

c. The person has prior written authorization to commit the act from a governmental regulatory authority or a district attorney or from an authorized agent of a governmental regulatory authority or a district attorney.

**4. SEIZURE.** A police officer shall seize any cigarette or tobacco product that has been sold to and is in the possession of a person under 18 years of age.

**5. PENALTY.** Any person convicted of violating this section, shall be subject to a forfeiture not to exceed \$50.

**106-31. Loitering or Prowling.** The activities of loitering or prowling set forth in subs. 1 to 9 are unlawful within the limits of the city.

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

**2. DWELLING AREAS, ETC.** Hides, waits or otherwise loiters in the vicinity of any private dwelling house, apartment building or

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any other place of residence with the unlawful intent to watch, gaze or look upon the occupants therein in a clandestine manner.

**3. PUBLIC REST ROOMS.** Loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

**4. SCHOOLS, ETC.** Loiters in or about any school or public place at or near which children or students attend or normally congregate. As used in this subsection "loiter" means to delay, to linger or to idle in or about any said school or public place without a lawful purpose for being present.

**5. PUBLIC BUILDINGS, ETC.** Lodges in any building, structure or place whether public or private without the permission of the owner or person entitled to possession or in control thereof.

**6. RESTAURANTS, TAVERNS, CONVENIENCE STORES, FILLING STATIONS, PUBLIC BUILDINGS, ETC.,** Loiters in or about a restaurant, tavern, convenience store, filling station or other public building. As used in this subsection, "loiter" means to, without just cause, remain in a restaurant, tavern, convenience store, filling station or public building or to remain upon the property immediately adjacent thereto after being asked to leave by the owner or person entitled to possession or in control thereof, or where "no loitering" signs are posted. No arrest shall be made for a violation of this subsection unless the arresting officer first affords such persons an opportunity to explain such conduct, and no one shall be convicted of violating this subsection if it appears at trial that the explanation given was true and disclosed a lawful purpose.

**7. SOLICITING, ETC.** To loiter in or near any thoroughfare or place open to the public in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting or procuring another to commit an act of prostitution. Among the circumstances which may be considered in determining whether such purpose is manifested: that such person is a known prostitute or panderer, repeatedly beckons to stop or attempts to stop, or engages male or female passersby in conversation, or repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms or any other bodily gesture. The violator's conduct must be such as to

demonstrate a specific intent to induce, entice, solicit or procure another to commit an act of prostitution. No arrest shall be made for a violation of this subsection unless the arresting officer first affords such persons an opportunity to explain such conduct, and no one shall be convicted of violating this subsection if it appears at trial that the explanation given was true and disclosed a lawful purpose. As used in this subsection:

a. "Public place" is an area generally visible to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles, whether moving or not, and buildings open to the general public including those which serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

b. "Known prostitute or panderer" means a person who within 5 years previous to the date of arrest for violation of this section, had within the knowledge of the arresting officer been convicted in Milwaukee municipal court or Milwaukee county circuit court of an offense involving prostitution.

**8. PARKING LOTS, ETC.** Loiters in or upon any public parking surface lot or public parking structure, either on foot or in or upon any conveyance being driven or parked thereon, without the permission of the owner or person entitled to possession or in control thereof, notwithstanding the notification requirements of ss. 101-23.5 and 110-10. No arrest shall be made for a violation of this subsection unless the arresting officer first affords such persons an opportunity to explain such conduct, and no one shall be convicted of violating this subsection if it appears at trial that the explanation given was true and disclosed a lawful purpose. As used in this subsection:

a. "Public parking structure" means a building enclosure or garage above or under the ground, or any portion thereof, in which automobiles or motor vehicles may be parked, stored, housed or kept, and open to public use with or without charge.

b. "Public parking surface lot" means 5 or more ground level parking spaces, or any portion thereof, not located in a structure, upon which automobiles or motor vehicles may be parked, stored, housed or kept, and open to public use with or without charge.

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**9. PRIVATE OR PUBLIC RESIDENTIAL PROPERTY, ETC.** Loiters in or on private or public residential property in residential neighborhoods. As used in this subsection, "loiter" means to, without just cause, linger, remain in or on private or public residential property, or to remain upon the property immediately adjacent thereto after being asked to leave by the owner or person entitled to possession or in control thereof, or where No Loitering signs are posted. No arrest shall be made for a violation of this subsection unless the arresting officer first affords such persons an opportunity to explain such conduct, and no one shall be convicted of violating this subsection if it appears at trial that the explanation given was true and disclosed a lawful purpose.

**10. PENALTIES.** Any person who violates any provision of this section shall be fined not more than \$500 together with the costs of prosecution or, upon default of payment, shall be imprisoned in the county jail or house of correction for not more than 20 days; and, further, any person who violates any provision of this section between the hours of 8:00 p.m. and 5:00 a.m. upon a street designated as a cruising area under s. 101-20.5, including the land within the street lines whether or not improved, may be fined not less than \$150 nor more than \$500 or, upon default of payment thereof, shall be imprisoned in the house of correction of Milwaukee county for not more than 20 days.

### 106-32. Loitering by Gang Members.

**1. DEFINITIONS:** In this section:

a. "Gang loitering" means remaining in any one place under circumstances that would warrant a reasonable person to believe that the purpose or effect of that behavior is to enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities.

b. "Criminal gang" means an ongoing organization, association or group of 3 or more persons, whether formal or informal, that has as one of its primary activities the commission of one or more of the criminal acts, or acts that would be criminal if the actor were an adult, specified in par.

e-1 to 21; that has a common name or a common identifying sign, or symbol; and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

c. "Criminal gang activity" means the commission, attempted commission or solicitation of the offenses, listed in par. e-1 to 21, provided that the offenses are committed by 2 or more persons, or by an individual at the direction of, or in association with, any criminal street gang, with the specific intent of promoting, furthering or assisting in any criminal conduct by gang members.

d. "Criminal gang member" means any person who participates in criminal gang activity as defined in par. c, with a criminal gang, and meets one or more of the following criteria:

d-1. The person is a self-admitted gang member.

d-2. The person is identified as a gang member by a reliable and proven source.

d-3. The person is associated with known gang members and uses gang signs, gang dress and mannerisms.

d-4. The person has been arrested more than one time with known gang members for gang-type criminal offenses.

d-5. The person has been observed by law enforcement associating with known gang members at known gang locations.

d-6. The person has at one time admitted to be a gang member, but now claims that he or she is not a gang member, although he or she continues to associate with known gang members.

e. "Pattern of criminal gang activity" means the commission of, attempt to commit or solicitation to commit 2 or more of the following crimes, or acts that would be crimes if the actor were an adult, at least one of those acts or crimes occurs after December 25, 1993, the last of those acts or crimes occurred within 3 years after a prior act or crime, and the acts or crimes are committed, attempted or solicited on separate occasions or by 2 or more persons:

e-1. Manufacture, distribution or delivery of a controlled substance or controlled substance analog, as prohibited in s. 961.41 (1), Wis. Stats.

e-2. First-degree intentional homicide, as prohibited in s. 940.01, Wis. Stats.

e-3. Second-degree intentional homicide, as prohibited in s. 940.05, Wis. Stats.

e-4. Battery, as prohibited in s. 940.19 or 940.195, Wis. Stats.

e-5. Battery, special circumstances, as prohibited in s. 940.20, Wis. Stats.

e-6. Mayhem, as prohibited in s. 940.21, Wis. Stats.

e-7. Sexual assault, as prohibited in s. 940.225, Wis. Stats.

e-8. False imprisonment, as prohibited in s. 940.30, Wis. Stats.

e-9. Taking hostages, as prohibited in s. 940.305, Wis. Stats.

e-10. Kidnapping, as prohibited in s. 940.31, Wis. Stats.

e-11. Intimidation of witnesses, as prohibited in s. 940.42 or 940.43, Wis. Stats.

e-12. Intimidation of victims, as prohibited in s. 940.44 or 940.45, Wis. Stats.

e-13. Criminal damage to property, as prohibited in s. 943.01, Wis. Stats.

e-14. Criminal damage to or threat to criminally damage the property of a witness, as prohibited in s. 943.011 or 943.017 (2m), Wis. Stats.

e-15. Arson of building or damage by explosives, as prohibited in s. 943.02, Wis. Stats.

e-16. Burglary, as prohibited in s. 943.10, Wis. Stats.

e-17. Theft, as prohibited in s. 943.20, Wis. Stats.

e-18. Taking, driving or operating a vehicle, or removing a part or component of a vehicle, without the owner's consent, as prohibited in s. 943.23, Wis. Stats.

e-19. Robbery, as prohibited in s. 943.32, Wis. Stats.

e-20. Sexual assault of a child, as prohibited in s. 948.02, Wis. Stats.

e-21. Repeated acts of sexual assault of the same child, as prohibited in s. 948.025, Wis. Stats.

f. "Public place" means the public way and any other location open to the public, whether publicly or privately owned.

**2. GANG LOITERING PROHIBITED.**

a. It shall be unlawful for a member of a criminal street gang to engage in gang loitering with one or more persons in any public place designated by the chief of police for the enforcement of this section.

b. Whenever a police officer observes a member of a criminal street gang engaged in gang loitering with one or more other persons in any public place designated by the chief of police under sub. 3 for the enforcement of this section, the police officer shall, subject to applicable procedures promulgated by the chief of police:

b-1. Inform all such persons that they are engaged in gang loitering within an area in which loitering by groups containing criminal street gang members is prohibited.

b-2. Order such persons to disperse and remove themselves from within sight and hearing of the place at which the order was issued.

b-3. Inform those persons that they will be subject to arrest if they fail to obey the order promptly or engage in further gang loitering within sight and hearing of the place at which the order was issued during the next 3 hours.

**3. DESIGNATED AREAS.** a. The chief of police may by written directive designate areas of the city in which the enforcement of this section is necessary because gang loitering has enabled criminal street gangs to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities. Prior to making a determination under this subsection, the chief shall consult, as he or she deems appropriate with persons who are knowledgeable about the effects of gang activity in areas in which this section may be enforced. Such persons may include, but need not be limited to, members of the police department with special training or experience related to criminal street gangs; other personnel of the department with particular knowledge of gang activities in the proposed designated area; elected and appointed officials of the area; and community-based organizations familiar with the area. The chief may develop and implement procedures for the periodic review and update of designations made under this subsection.

b. The chief of police shall by written directive promulgate procedures to prevent the enforcement of this section against persons who are engaged in collective advocacy activities that are protected by the constitution of the United States or the state of Wisconsin.

**4. PENALTY.** a. Any person violating this section shall, upon conviction, forfeit not less than \$500 nor more than \$5,000, together with the costs of prosecution and, in default of payment shall be imprisoned in the house of correction or the county jail not to exceed 90 days, or until such forfeiture costs are paid in full.

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### 106-33. Sales of Matches to Persons Under Thirteen Years of Age.

1. **PURPOSE.** In the interest of welfare and safety of the general public, the selling or giving of matches to persons under the age of 13 years is prohibited, unless such person is accompanied by a parent or guardian, to prevent such minors from injuring themselves or others while playing with matches.

2. **DEFINITION.** As used in this section the term "match" shall mean a slender piece of wood or other fairly rigid material tipped with a combustible mixture that bursts into flame by friction, sometimes only on a specially prepared surface, that so ignites the end of the piece.

3. **PROHIBITION.** No person shall sell or offer for sale, barter, or give away matches to a person under the age of 13 years nor any other flame producing devices which are easily operated by such persons, unless such person is accompanied by his parent or other adult member of such person's family, his or her legal guardian, or person in loco parentis.

4. **PENALTY.** Any person, firm, or corporation violating sub. 3 shall upon conviction forfeit \$25 for each offense, and in default of payment shall be imprisoned in the house of correction or the county jail not to exceed 90 days or until such forfeiture costs are paid.

### 106-34. Sale of Spray Paint, Etching Cream and Wide-Tipped Markers to Minors.

1. **DEFINITIONS.** In this section: a. "Etching cream" means any caustic cream, gel, liquid, or solution capable, by means of a chemical action, of defacing, damaging, or destroying hard surfaces in a manner similar to acid.

b. "Graffiti" means any inscription, word, figure or design marked, scratched, etched, drawn or painted with spray paint, liquid paint, ink, chalk, die or other similar substances on buildings, fences, structures and similar places without the express permission of the owner or operator of the property.

c. "Spray paint" means any container, regardless of the material from which it is made, which is made or adapted for the purpose of spraying paint.

d. "Wide-tipped markers" means any indelible marker or similar implement with a tip which, at its broadest width, is 1/4 inch or greater.

### 2. PROHIBITED CONDUCT.

a. **Sale of Spray Paint, Etching Cream and Wide-Tipped Markers to Minors.** No person, firm, or corporation, except a parent or legal guardian, employer, teacher or other person authorized to supervise minors, may sell or give away or in any way furnish spray paint, etching cream or wide-tipped markers to any person under the age of 18.

b. **Possession of Spray Paint, Etching Cream and Wide-Tipped Markers.** No person under the age of 18 may possess spray paint, etching cream or wide-tipped markers in a public or private place, without the express permission of the owner or operator of the property.

3. **DISPLAY OF SPRAY PAINT, ETCHING CREAM AND WIDE-TIPPED MARKERS.** Every person who owns, conducts, operates or manages a retail commercial establishment selling spray paint, etching cream or wide-tipped markers shall:

a. Place a sign in clear public way view at or near the display of such products stating:

GRAFFITI IS AGAINST THE LAW. THE DEFACING OF PUBLIC OR PRIVATE PROPERTY IS PUNISHABLE BY A FINE OF UP TO \$5,000 OR IMPRISONMENT FOR UP TO 90 DAYS.

b. Place a sign in the direct view of persons responsible for accepting customer payment for spray paint, etching cream or wide-tipped markers stating:

SELLING SPRAY PAINT, ETCHING CREAM OR WIDE-TIPPED MARKERS TO PERSONS UNDER 18 YEARS OF AGE IS AGAINST THE LAW. VIOLATORS CAN BE FINED UP TO \$5,000 OR IMPRISONED UP TO 90 DAYS.

c. Display such paint, cream or markers in such a manner as to make them inaccessible to a customer present in the area allocated for customer use without assistance from an employee of that establishment.

d. Display such items, if the person chooses not to comply with the display requirements set forth in par. c, such that mirrors, cameras or personnel can readily observe customers during all times such establishment is open to the public.

4. **PENALTIES.** a. Any person convicted of violating any provision of this section, shall forfeit not less than \$500 nor more than \$5000 per violation, or upon default of payment be imprisoned for not more than 90 days.

b. Any person convicted of violating sub. 2-b shall forfeit \$200 per violation.

**106-34.5. Prostitution. 1. PROHIBITED CONDUCT.** It shall be unlawful for any person to commit any of the following:

a. Have, offer to have or request or agree to have nonmarital sexual intercourse for anything of value.

b. Commit, offer to commit, request or agree to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another person for anything of value.

c. Masturbate a person, offer to masturbate a person, request to be masturbated or agree to masturbate a person for anything of value.

d. Commit, offer to commit, request to commit or agree to commit an act of sexual contact for anything of value.

e. Enter or remain in any place of prostitution with intent to have nonmarital sexual intercourse or to commit an act of sexual gratification, in public or in private, involving any of the acts listed in pars. a to d.

f. Solicit another to commit any of the acts listed in pars. a to d.

g. Direct or transport another person to a prostitute, or direct or transport a prostitute to another person, with intent to facilitate the other person in having non-marital intercourse or committing an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact with a prostitute.

**2. EVIDENCE OF VIOLATION.** Circumstances which may be considered in determining whether a violation of this section has occurred include, but are not limited to:

a. Attempting to determine the presence of a police officer by exposing or touching, of seeking to expose or touch, an intimate body part of another or of one's self, or asking, soliciting, encouraging or attempting to procure another to do the same.

b. Inquiring in any manner as to whether another person is a police officer.

**3. PENALTY.** Any person who violates any provision of this section shall, upon conviction, be fined not less than \$500 nor more than \$5,000, together with the costs of prosecution, and in default of payment shall be imprisoned as provided by law.

**106-35. Loitering-Soliciting Prostitutes. 1. DEFINITIONS.** In this section:

a. "Known area of prostitution" means a public place where within 5 years previous to the date of arrest for violation of this section, and within the knowledge of the arresting officer, a person had been arrested for a violation which led to a conviction in Milwaukee municipal court or Milwaukee County circuit court of an offense involving prostitution.

b. "Known prostitute" means a person who, within 5 years previous to the date of arrest for violation of this section, had within the knowledge of the arresting officer been convicted in Milwaukee municipal court or Milwaukee County circuit court of an offense involving prostitution.

c. "Public place" means an area generally visible to public view and includes, but is not limited to, streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots and buildings open to the general public including those which serve food or drink or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds surrounding them.

**2. PROHIBITED CONDUCT.** It shall be unlawful for any person to loiter or drive in any public place in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting or procuring another to commit an act of prostitution.

**3. EVIDENCE OF VIOLATION.** The violator's conduct must be such as to demonstrate a specific intent to induce, entice, solicit or procure another to commit an act of prostitution. No arrest may be made for a violation of this section unless the arresting officer first affords the person an opportunity to explain the person's conduct, and no one shall be convicted of violating this section if it appears at trial that the explanation given was true and disclosed a lawful purpose. Factors that may be considered in determining whether the purpose referred to in sub. 2 is manifested are the following:

a. That the person frequents, either on foot or in a motor vehicle, a known area of prostitution.

b. That the person repeatedly beckons to stop or attempts to stop, or engages known prostitutes in conversation.

c. That the person stops the motor vehicle the person is the operator of and picks up or attempts to pick up a known prostitute.

d. That the person solicits any individual to engage in prostitution-related activity.

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e. Any other evidence which may prove such purpose is manifested.

4. PENALTY. Any person who violates any provision of this section shall, upon conviction, forfeit not less than \$2,500 nor more than \$5,000, together with the costs of prosecution, and in default of payment shall be imprisoned as provided by law.

**106-35.6. Loitering-Illegal Drug Activity. 1.** In this section: a. "Illegal drug activity" means unlawful conduct contrary to any provision of ch. 961, Wis. Stats., or any substantially similar federal statute, statute of a foreign state, or ordinance of any political subdivision.

b. "Known area of illegal drug activity" means a public place where, within 3 years previous to the date of arrest for violation of this section, and within the collective knowledge of the police department, a person has been arrested for a violation which led to a conviction in any municipal, state or federal court of an offense involving illegal drug activity.

c. "Known drug seller or purchaser" means a person who, within 3 years previous to the date of arrest for violation of this section, had within the collective knowledge of the police department been convicted in any municipal, state or federal court of an offense involving illegal drug activity.

d. "Public place" means an area generally visible to public view and includes, but is not limited to, streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots and buildings open to the general public including those which serve food or drink or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds surrounding them.

2. Any person who loiters or drives in any public place in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting or procuring another to engage in illegal drug activity shall forfeit not less than \$500 nor more than \$5,000 or upon default of payment be imprisoned for not more than 90 days. Among the circumstances which may be considered in determining whether such purpose is manifested are the following: that the person frequents, either on foot or in a motor vehicle, a known area of illegal drug activity; repeatedly beckons to stop or attempts to stop known drug sellers or purchasers or engages known drug sellers or purchasers in conversation; stops the motor vehicle the person is the operator of and

sells or purchases or attempts to sell or purchase illegal drugs to or from a known drug seller or purchaser; transfers small objects or packages for currency in a furtive fashion or manifestly endeavors to conceal himself, herself or any object or package which reasonably could be involved in illegal drug activity; takes flight upon appearance of a police officer. The violator's conduct must be such as to demonstrate a specific intent to induce, entice, solicit or procure another to engage in illegal drug activity. No arrest may be made for a violation of this section unless the arresting officer first affords the person an opportunity to explain the person's presence and conduct, unless flight by the person or other circumstances make it impracticable to afford such an opportunity, and no one shall be convicted of violating this section if it appears at trial that the explanation given was true and disclosed a lawful purpose.

**106-36. Drug Paraphernalia. 1. DEFINITION.** In this section "drug paraphernalia" means all equipment, products and materials of any kind which are used, designed for use or primarily intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog, as defined in ch. 961, Wis. Stats., in violation of this section. It includes, but is not limited to:

a. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance or controlled substance analog can be derived.

b. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs.

c. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance.

d. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs.

e. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances or controlled substance analogs.

f. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or controlled substance analogs.

g. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

h. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs.

i. Capsules, balloons, envelopes or other containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs.

j. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs.

k. Objects used intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, including but not limited to:

k-1. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.

k-2. Water pipes.

k-3. Carburetion tubes and devices.

k-4. Smoking and carburetion masks.

k-5. Objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.

k-6. Miniature cocaine spoons and cocaine vials.

k-7. Chamber pipes.

k-8. Carburetor pipes.

k-9. Electric pipes.

k-10. Air-driven pipes.

k-11. Chillums.

k-12. Bongs.

k-13. Ice pipes or chillers.

**2. DETERMINATION OF DRUG PARAPHERNALIA.** In determining whether an object is drug paraphernalia, the following shall be considered:

a. Statements by an owner or by anyone in control of the object concerning its use.

b. The proximity of the object in time and space to a direct violation of this section.

c. The proximity of the object to controlled substances or controlled substance analogs.

d. The existence of any residue of controlled substances or controlled substance analogs on the object.

e. Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom the person knows, or should reasonably know, intend to use the object to facilitate a violation of this section. The innocence of an owner or of anyone in control of the object as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia.

f. Oral or written instructions provided with the object concerning its use.

g. Descriptive materials accompanying the object which explain or depict its use.

h. Local advertising concerning its use.

i. The manner in which the object is displayed for sale.

j. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

k. The existence and scope of legitimate uses for the object in the community.

L. Expert testimony concerning its use.

### **3. PROHIBITED ACTIVITIES.**

a. **Possession of Drug Paraphernalia.** No person may use or possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this section.

b. **Manufacture, Sale, or Delivery of Drug Paraphernalia.** No person may sell, deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this section.

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c. Delivery of Drug Paraphernalia to a Minor. Any person 17 years of age or over who violates par. b by delivering drug paraphernalia to a person under 17 years of age who is at least 3 years younger than the violator is guilty of a special offense.

d. Advertisement of Drug Paraphernalia. No person may place in any newspaper, magazine, handbill or other publication, or upon any outdoor billboard or sign, any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

e. Exemptions. e-1. This subsection does not apply to hypodermic syringes, needles and other objects used or intended for use in parenterally injecting substances into the human body in accordance with ch. 961, Wis. Stats.

e-2. This subsection does not apply to any items, including pipes, papers and accessories, which are designed for use or primarily intended for use with tobacco products.

4. PENALTIES. a. Any drug paraphernalia used in violation of this section shall be seized and forfeited to the city.

b. Any person who violates sub. 3-a or d shall, upon conviction, be subject to a forfeiture of not more than \$500, together with the costs of prosecution, and upon default of payment be imprisoned in the county jail or house of correction until the costs are paid, but not to exceed 30 days.

c. Any person who violates sub. 3-b shall, upon conviction, be subject to a forfeiture of not more than \$1,000, together with the costs of prosecution, and upon default of payment be imprisoned in the county jail or house of correction until the costs are paid, but not to exceed 90 days.

d. Any person who violates sub. 3-c shall, upon conviction, be subject to a forfeiture of not more than \$10,000, together with the costs of prosecution, and upon default of payment be imprisoned in the county jail or house of correction until the costs are paid, but not to exceed 90 days.

### **106-37. Frequenting an Illegal Drug House.**

1. DEFINITIONS. In this section, "illegal drug house" means any building, place or room not generally open to the public in which there is substantial evidence of violations occurring of the Uniform Controlled Substances Act in Wis. Stats. ch. 961.

2. PROHIBITED ACTIVITIES. It shall be unlawful for any person to knowingly be an inmate of, frequent or patronize any illegal drug house.

3. PENALTY. Upon conviction, any person found to be in violation of this section shall be subject to a forfeiture of not less than \$500 nor more than \$5000, and in default of payment thereof, be imprisoned in the county jail or house of correction not to exceed 90 days. Each day during which a violation is occurring shall constitute a separate offense.

### **106-38. Possession of Marijuana.**

1. DEFINITIONS. In this section, "marijuana" and "practitioner" shall be defined as in s. 961.01(14) and (19), Wis. Stats., respectively.

2. PROHIBITED. No person may possess marijuana unless the marijuana was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice or except as authorized by ch. 961, Wis. Stats.; except that in accordance with s. 66.0107(1)(bm), Wis. Stats., if a complaint is issued regarding an allegation of possession of more than 25 grams of marijuana, or possession of any amount of marijuana following a conviction in this state for possession of marijuana, the subject of the complaint may not be prosecuted under this section for the same action that is the subject of the complaint unless the charges are dismissed or the district attorney declines to prosecute the case.

3. PENALTY. Any person violating this section shall upon conviction:

a-1. Forfeit not less than \$0 nor more than \$50, or, in default of payment, may be imprisoned as provided by law.

a-2. Forfeit not less than \$250 nor more than \$500, or, in default of payment may be imprisoned as provided by law if a person is convicted of smoking marijuana in a public place.

b. Be permitted to perform community service work and attend substance abuse education and counseling in lieu of paying the forfeiture under par. a.

### **106-41. Fraud On Residential Landlords Prohibited.**

1. FRAUD PROHIBITED. No person shall, with intent to defraud, do either of the following:

a. Intentionally abscond without paying rent that has been contractually agreed upon in a written lease or written rental agreement with a landlord. Prima facie evidence of intentionally absconding will be established if a tenant fails to pay rent due prior to the vacating of the rental premises by the tenant, the nonpayment of the rent continues for a period of 5 days after vacation of the premises, and the tenant fails to provide the landlord with a complete and accurate forwarding address.

b. Issue any check, money order or any other form of bank or monetary draft as a payment of rent, where such document lacks sufficient funds, where the account is closed or where such draft is unredeemable in any other form or fashion.

Prima facie evidence of intention to defraud will be established if a tenant fails within 5 days of a written demand by the landlord or agent to pay in full the total amount of the draft presented as rent payment plus any bank charges to the landlord attributable to the unredeemability of the draft.

**2. APPLICABILITY.** This section shall apply to written leases or written rental agreements between residential landlords and tenants only. Words and terms used in this section shall be defined and construed in conformity with the provisions of Ch. ATCP 134, Wis. Adm. Code; ch. 704 and s. 990.001 (1), Wis. Stats. The act of service by a landlord of a legal eviction notice or notice to terminate tenancy shall not in itself act as a bar to prosecution under this section.

**3. PROCEDURE.** A peace officer may issue a citation for either offense only when the complainant provides the following:

a. The name and current or last known address of the tenant, a copy of the subject written lease agreement or written rental agreement.

b. The amount of rent due, date it was due, date the tenant vacated the premises and testimony that the rent remained unpaid for not less than 5 days after vacating and that the tenant did not notify or attempt to notify the complainant of tenant's new address or that tenant knowingly gave complainant a false address.

c. For violations under sub.1-b, the document used for attempting rent payment, the written demand for payment of the full amount plus bank charges, proof of service of the written demand pursuant to s. 704.21, Wis. Stats., and testimony that at least 5 days have elapsed since the date of service and no payment has been made.

**4. PENALTY.** a. Any person who violates this section shall upon conviction forfeit not less than \$250 nor more than \$1,000 together with costs of prosecution, or, in default of payment, may be imprisoned for not more than 40 days. In addition, the court may order such person to make full or partial restitution, in accordance with s. 800.093, Wis. Stats.

b. In accordance with s. 800.09, Wis. Stats., community service work may be imposed in lieu of making restitution or paying the forfeiture or both.

**106-51. Residency Restrictions for Sex Offenders. 1. FINDINGS AND INTENT.**

The common council finds that sex offenders who prey on children are sex predators who present an extreme threat to the public safety. Many sex offenders commit numerous offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society, while incalculable, clearly exorbitant. The common council finds the risk of recidivism increases if the sex offender recently offended and if the sex offender does not have a strong social network, including community and familial ties. The common council is aware of many studies and reports concerning recidivism of sex offenders and the effectiveness of sex offender residency restrictions. The common council acknowledges that literature on the subject includes some studies that support the practice of sex offender residency restrictions and others that are critical of the practice. The common council is also aware that absent a domicile clause, the city would have open doors for non-resident sex offender residency when other communities have closed doors, inviting a substantial increase in child sex offender placements, with the related adverse impacts on the health, safety and welfare of the city and its residents. It is the intent of this section to enact a regulatory scheme that is civil and non-punitive in order to serve the city's compelling interest to promote, protect, and improve the health, safety and welfare of the citizens of the city.

**2. DEFINITIONS.** For the purposes of this section:

a. "Child" means a person under the age of 16 years.

b. "Designated offender" means any person who is required to register under s. 301.45, Wis. Stats., for any offense against a child. This definition does not include a person who is released under s. 980.08, Wis. Stats., so long as

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the person is subject to supervised release under ch. 980, Wis. Stats., the person is residing where he or she is ordered to reside under s. 980.08, Wis. Stats., and the individual is in compliance with all court orders issued under ch. 980, Wis. Stats.

c. "Hospital" has the meaning given in s. 50.33(2)(a), Wis. Stats.

d. "Residence" ("Reside") means the place where a person sleeps, which may include more than one location, and may be mobile or transitory.

e. "Treatment facility" has the meaning given in s. 51.01(19), Wis. Stats.

**3. ORIGINAL DOMICILE RESIDENCY RESTRICTION.** A designated offender shall not establish a residence within the city, unless the person was domiciled in the city at the time of the offense resulting in the person's most recent conviction for committing the offense that is within the definition of a designated offender.

**4. RESIDENCY RESTRICTION EXCEPTIONS.** A designated offender prohibited from establishing a residence within the city as specified in sub. 3 does not commit a violation of this section if the designated offender demonstrates any of the following:

a. The person established a residence and reported and registered the residence as provided in s. 301.45, Wis. Stats., before the effective date of this ordinance, September 23, 2017.

b. The person was under the age of 18 years at the time of the offense or is a ward under guardianship.

c. The residence is also the primary residence of the person's child, grandparent, guardian, parent, sibling or spouse.

d. The residence is a mental health facility or a jail, juvenile facility, prison or other correctional institution where the person is required to serve a sentence.

e. The residence is a hospital or treatment facility.

f. The person's most recent offense that is within the definition of a designated offender occurred more than 10 years ago and it has been at least 10 years since the person was incarcerated for the most recent offense that is within the definition of a designated offender.

**5. PENALTY.** A designated offender who violates sub. 3 shall be subject to a forfeiture of not less than \$1,000 nor more than \$2,500 for each violation, and in default of payment may be imprisoned as provided by law. Each day a violation continues shall constitute a separate offense. The city may also seek equitable relief.

**6. EVALUATION.** The common council shall evaluate the effect of this ordinance one year after the effective date of this ordinance, September 23, 2017.

### 106-53. Loitering of Sex Offenders.

**1. LOITERING.** It shall be unlawful for any person defined as a designated offender under s. 106-51-2-b, to loiter or prowl, in a school, licensed day care center, park, recreational trail, or playground, in a place, at a time, or a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself or herself or manifestly endeavors to conceal himself or herself or any object. Unless flight by the actor or other circumstances makes it impracticable, a peace officer shall prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him or her to identify himself or herself and explain his or her presence and conduct at the school, licensed day care center, park, recreational trail, or playground. No person shall be convicted of an offense under this section if the peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.

**2. EXCEPTIONS.** This section shall not apply where the actor was by his or her parent, guardian or other adult person having his or her care, custody or control, or where that actor was exercising First Amendment rights protected by the U. S. constitution or Wisconsin constitution, including freedom of speech, the free exercise of religion, or the right of assembly.

**3. PENALTY.** Any person violating this section upon conviction shall forfeit not less than \$500 nor more than \$5,000, and in default of payment may be imprisoned as provided by law.

\*For legislative history of chapter 106,  
Contact the Municipal Research Library\*

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