

## CHAPTER 3

### Offenses Against Property

#### SEC. 11-3-1 DESTRUCTION OF PROPERTY PROHIBITED.

- (a) **DESTRUCTION OF PROPERTY.** No person shall willfully injure or intentionally deface, destroy or unlawfully remove, take or meddle with any property of any kind or nature within the City and belonging to the City or its departments, the Menasha School District or to any private person, without the consent of the owner or proper authority.
- (b) **UNLAWFUL REMOVAL OF PROPERTY.** It shall be unlawful for any person to take and carry away the property of another without the owner's consent with the intention to do so.

#### SEC. 11-3-2 LITTERING PROHIBITED.

- (a) **LITTERING PROHIBITED.** No person shall throw any glass, refuse or waste, filth or other litter upon the streets, alleys, highways, public parks or other property of the City, or upon property within the City owned by the Menasha School District or any private person, or upon the surface of any body of water within the City.
- (b) **LITTER FROM CONDUCT OF COMMERCIAL ENTERPRISE.**
  - (1) Scope. The provisions of this Subsection shall apply to all sales, promotions and other commercial ventures that result in litter being deposited on any street, alley or other public way.
  - (2) Litter to be cleaned up. Any person, firm, corporation or association carrying on an enterprise that results in litter being deposited on any street, alley or other public way shall clean up the same within twelve (12) hours of the time the same is deposited. If any such litter is subject to being blown about, it shall be picked up immediately. If any such litter is likely to attract animals or vermin, such litter shall be picked up immediately.
  - (3) Litter picked up at litter's expense. If any person, firm, corporation or association fails to pick up any litter as required by Subsection (b)(1) within the time specified, the City shall arrange to have the same picked up by City crews or by private enterprise. Applicable bidding procedures shall be used for any arrangement for the use of private enterprise to pick up such litter. The entire expense of picking up such litter, together with an additional charge of twenty percent (20%) for administrative expenses, shall be charged to the person, firm, corporation or association that did the littering. If such sum is not promptly paid, steps shall be taken, with the advice of the City Attorney's office, to collect the same. This charge shall be in addition to any forfeiture or other penalty for violation of this Section.
- (c) **DUMPING OF REFUSE AND GRASS IN GUTTERS.** No person shall deposit any refuse, leaves or grass clippings in any gutter along any public street, road, alley or highway.
- (d) **HANDBILLS.**
  - (1) Scattering Prohibited. It shall be unlawful to deliver any handbills or advertising material to any premises in the City except by being handed to the recipient, placed on the porch, stoop or entrance way of the building or firmly affixed to a building so as to prevent any such articles from being blown about, becoming scattered or in any way causing litter.
  - (2) Papers in Public Places Prohibited. It shall be unlawful to leave any handbills,

advertising material or newspapers unattended in any street, alley, public building or other public place, provided that this shall not prohibit the sale of newspapers in vending machines.

### **SEC. 11-3-3 OPEN CISTERNS, WELLS, BASEMENTS OR OTHER DANGEROUS EXCAVATIONS PROHIBITED.**

No person shall have or permit on any premises owned or occupied by him any open cisterns, cesspools, wells, unused basements, excavations or other dangerous openings. All such places shall be filled, securely covered or fenced in such manner as to prevent injury to any person and any cover shall be of a design, size and weight that the same cannot be removed by small children.

### **SEC. 11-3-4 WELL ABANDONMENT.**

- (a) **PURPOSE.** To prevent contamination of groundwater and to protect public health, safety and welfare by assuring that unused, unsafe or non-complying wells or wells which may serve as conduits for contamination or wells which may be illegally corss-connected to the municipal water system, are properly abandoned.
- (b) **APPLICABILITY.** This ordinance applies to all wells located within the corporate limits of the City of Menasha.
- (c) **DEFINITIONS.**
  - (1) Municipal water system. A system for the provision to the public of piped water for human consumption when such system has at least 15 service connections or regularly serves at least 25 year-round residents owned or operated by a city, village, county, town sanitary district, utility district or public institution as defined in s. 49.10(12)(f)1., Wisconsin Statutes, or privately owned water utility serving any of the above.
  - (2) Non-complying. A well or pump installation which does not comply with the provisions of chapter NR 112, Wisconsin Administrative Code, in effect at the time the well was constructed, a contamination source, was installed, the pump was installed or work was done on either the well or pump installation.
  - (3) Pump installation. Pump and related equipment used for withdrawing water from a well including the discharge piping, the underground connections, pitless adapters, pressure tanks, pits, sampling faucets and well seals or caps.
  - (4) Unsafe. Well or pump installation which produces water which is bacteriologically contaminated or contaminated with substances in exces of the standars of chapters NR 109 or 140, Wisconsin Administrative Code, or for which a Health Advisory has been issued by the Department of Natural Resources.
  - (5) Unused. Well or pump installation which is not in use or does not have a functional pumping system.
  - (6) Well. An excavation or opening into the ground made by digging, boring, drilling, driving, or other methods for the purpose of obtaining groundwater for consumption or other use.
  - (7) Well Abandonment. The filling and sealing of a well according to the provisions of chapter NR 112, Wisconsin Administrative Code.
- (d) **ABANDONMENT REQUIRED.** All wells located on premises within the corporate limits of the City shall be abandoned in accordance with the terms of this ordinance and chapter NR 112, Wisconsin Administrative Code, by October 10, 1990, unless a well operation permit has been obtained by the well owner from the City Clerk.
- (e) **WELL OPERATION PERMIT.** The City Clerk may grant a permit to a private well owner to operate a well for a period not to exceed 5 years providing the conditions of this

section are met. An owner may request renewal of a well operation permit by submitting information verifying that the conditions of this section are met. The City, or its agent, may conduct inspections or have water quality tests conducted at the applicant's expense to obtain or verify information necessary for consideration of a permit application or renewal. Permit applications and renewals shall be made on forms provided by the City Clerk. The following conditions must be met for issuance or renewal of a well operation permit:

- (1) The well and pump installation meet or are upgraded to meet the requirements of chapter NR 112, Wisconsin Administrative Code.
  - (2) The well construction and pump installation have a history of producing bacteriologically safe water as evidenced by at least 2 samplings taking a minimum of 2 weeks apart. No exception to this condition may be made for unsafe wells, unless the Department of Natural Resources approves, in writing, the continued use of the well.
  - (3) There are no cross-connections between the well and pump installation and the municipal water system; and,
  - (4) The proposed use of the well and pump installation can be justified as being necessary in addition to water provided by the municipal water system.
- (f) **ABANDONMENT PROCEDURES.**
- (1) All wells abandoned under the jurisdiction of this ordinance or rule shall be abandoned according to the procedures and methods of chapter NR 112, Wisconsin Administrative Code. All debris, pump, piping, unsealed liners and any other obstructions which may interfere with sealing operations shall be removed prior to abandonment.
  - (2) The owner of the well, or other owner's agent, shall notify the clerk at least 48 hours prior to commencement of any well abandonment activities. The abandonment of the well shall be observed by the Inspection Department.
  - (3) An abandonment report form, supplied by the Department of Natural Resources, shall be submitted by the well owner to the City Clerk and the Department of Natural Resources within 10 days of the completion of the well abandonment.

#### **SEC. 11-3-5 ABANDONED REFRIGERATORS PROHIBITED.**

No person shall leave or permit to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, dwelling or other structure under his control in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or other container which has an airtight door or lid, snap lock or other locking device which may not be released from the inside without first removing said door or lid, snap lock or other locking device from said ice box, refrigerator or container, unless such container is displayed for sale on the premises of the owner or his agent and is securely locked or fastened.

#### **SEC. 11-3-6 RETAIL THEFT.**

- (a) Whoever intentionally alters indicia of price or value of merchandise or takes and carries away, transfers, conceals or retains possession of merchandise held for resale by a merchant without consent and with intent to deprive the merchant permanently of possession or the full purchase price may be penalized as provided in Chapter 1-1-7.
- (b) The intentional concealment of un-purchased merchandise which continues from one floor to another or beyond the last station for receiving payments in a merchant's store is evidence of intent to deprive the merchant permanently of possession of such merchandise without

paying the purchase price thereof. The discovery of un-purchased merchandise concealed upon the person or among the belongings of another is evidence of intentional concealment on the part of the person so concealing such goods.

- (c) Whoever returns merchandise to a merchant for the purpose of claiming a cash refund or credit by intentionally deceiving the merchant with a representation that such merchandise was purchased by such person from such merchant at the price claimed where such merchandise was, in fact, not purchased by such person or was not purchased from such merchant or was purchased at a price lower than the price claimed, shall be guilty of a violation of this Section. Intentionally giving of a false name or address to a merchant during the return of merchandise is evidence of intent to defraud a merchant. Any person violating this Section may be penalized as provided in Chapter 1-1-7.
- (d) A merchant or merchant's adult employee who has probable cause for believing that a person has violated this Section in his presence may detain such person in a reasonable manner for a reasonable length of time to deliver him to a peace officer, or to his parent or guardian if a minor. The detained person must be promptly informed of the purpose for the detention and may make phone calls, but he shall not be interrogated or searched against his will before the arrival of a police officer who may conduct a lawful interrogation of the accused person. Compliance with this Subsection entitles the merchant or his employee affecting the detention to the same defense in any action as is available to a peace officer making an arrest in the line of duty.

State Law Reference: Section 943.50, Wis. Stats.

### **SEC. 11-3-7 STORAGE OF JUNK, ETC., REGULATED.**

No person shall store junked or discarded property including automobiles, automobile parts, trucks, tractors, refrigerators, furnaces, washing machines, stoves, machinery or machinery parts, wood, bricks, cement blocks or other unsightly debris which substantially depreciates property values in the neighborhood except or upon permit issued by the Common Council. The Chief of Police may require by written order any premises violating this Section to be put in compliance within the time specified in such order and, if the order is not complied with, may have the premises put in compliance and the cost thereof assessed as a special tax against the property.

Cross Reference: Section 7-11-5 and Title 10, Chapter 4.

### **SEC. 11-3-8 THEFT OF LIBRARY MATERIAL.**

- (a) **DEFINITIONS.** For the purposes of this Section, certain words and terms are defined as follows:
  - (1) Archives. A place in which public or institutional records are systematically preserved.
  - (2) Library. Means any public library, library of an educational or historical organization or society or museum, and specifically the public libraries of the City of Menasha.
  - (3) 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, or other tapes,

artifacts or other documents, written or printed materials, regardless of physical form of characteristics, belonging to, on loan to or otherwise in the custody of a library.

- (b) **POSSESSION WITHOUT CONSENT PROHIBITED.** Whoever intentionally takes and carries away, transfers, conceals or retains possession of any library material without the consent of a library official, agent or employee and with intent to deprive the library of possession of the material may be subject to a forfeiture as provided by the general penalty provisions of this Code. The failure to return library material after its proper return date, after written notice from the library, shall be deemed to be theft. Notice shall be considered given when written notice is mailed to the last-known address of the person with the overdue material; the notice date shall be the date of mailing.
- (c) **CONCEALMENT.** The concealment of library material beyond the last station for borrowing library material in a library 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 without consent of a library official, agent or employee and which is concealed upon the person or among the belongings of another is evidence of intentional concealment on the part of the person so concealing the material.
- (d) **DETENTION BASED ON PROBABLE CAUSE.** An official or adult employee or agent of a library who has probable cause for believing that a person has violated this Section 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 of the detention and be permitted to make telephone 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 Section 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.
- (e) **DAMAGING MATERIAL PROHIBITED.** No person shall mar, deface or in any other way damage or mutilate any library material.
- (f) **RETURN DEMANDED.** No person shall fail, on demand, to return any library material when such demand has been made in accordance with the rules and regulations duly made and adopted by the library.

State Law Reference: Section 943.61, Wis. Stats.

### **SEC. 11-3-9 DAMAGE TO PUBLIC PROPERTY.**

- (a) **DAMAGING PUBLIC PROPERTY.** No person shall climb any tree or pluck any flowers or fruit, wild or cultivated, or break, cut down, trample upon, remove, or in any manner injure or deface, write upon, defile or ill use any tree, shrub, flower, flower bed, turf, fountain, ornament, statue, building, fence, apparatus, bench, table, official notice, sign, bridge, structure or other property within any park or parkway, or in any way injure, damage or deface any public building, sidewalk or other public property in the City.
- (b) **BREAKING OF STREET LAMPS OR WINDOWS.** No person shall break glass in any street lamps or windows of any building owned or occupied by the City.

### **SEC. 11-3-10 DISTURBING CEMETERY PROPERTY.**

No person except the owner of the cemetery lot or a cemetery employee shall cut, remove, injure or carry away flowers, trees, plants or vines from any cemetery lot or property; nor shall any person deface, injure or mark upon any cemetery markers, headstones, monuments, fences or structures; nor shall any person other than the owner injure, carry away or destroy any vases, flower pots, urns or other objects which have been placed on any cemetery lot.

#### **SEC. 11-3-11 THEFT OF TELECOMMUNICATIONS SERVICE.**

- (a) No person may intentionally obtain or attempt to obtain telecommunications service, as defined in State Statutes 196.01(9m), by any of the following means:
  - (1) Charging such service to an existing telephone number or credit card number without the consent of the subscriber thereto or the legitimate holder thereof.
  - (2) Charging such service to a false, fictitious, suspended, terminated, expired, canceled or revoked telephone number or credit card number.
  - (3) Rearranging, tampering with or making connection with any facilities or equipment.
  - (4) Using a code, prearranged scheme, or other stratagem or device whereby said person in effect sends or receives information.
  - (5) Using any other contrivance, device or means to avoid payment of the lawful charges, in whole or in part, for such service.
- (b) This section shall apply when the said telecommunications service either originates or terminates, or both, in this state, or when the charges for said telecommunications service would have been billable, in normal course, by a person providing telecommunications service in this state, but for the fact that said service was obtained, or attempted to be obtained, by one or more of the means set forth in sub. (1).

#### **SEC. 11-3-12 THEFT OF CELLULAR TELEPHONE SERVICE.**

- (a) **DEFINITIONS.** In this section:
  - (1) "Cellular telephone service" means any telecommunications service provided by a company over a cellular telephone system for payment.
  - (2) "Company" means a cellular mobile radio telecommunications utility as defined in Wis. Statutes 196.202(1).
- (b) **PROHIBITIONS.** No person may intentionally do any of the following:
  - (1) Obtain or attempt to obtain cellular telephone service from a company by trick, artifice, deception, use of an illegal device or other fraudulent means with the intent to deprive that company of any or all lawful compensation for rendering each type of service obtained. The intent required for a violation of this paragraph may be inferred from the presence on the property and in the actual possession of the defendant of a device not authorized by the company, the major purpose of which is to permit reception of cellular telephone services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use.
  - (2) Give technical assistance or instruction to any person in obtaining or attempting to obtain any cellular telephone service without payment of all lawful compensation to the company providing that service. This paragraph does not apply if the defendant demonstrates that the technical assistance or instruction was given for a legitimate purpose.
  - (3) Maintain an ability to connect, whether physical, electronic, by radio wave or by other means, with any facilities, components or other devices used for the transmission of cellular telephone services for the purpose of obtaining cellular

telephone service without payment of all lawful compensation to the company providing that service. The intent required for a violation of this paragraph may be inferred from proof that the cellular telephone service to the defendant was authorized under a service agreement with the defendant and has been terminated by the company and that thereafter there exists in fact an ability to connect to the company's cellular telephone system.

- (4) Make or maintain any modification or alteration to any device installed with the authorization of a company for the purpose of obtaining any service offered by that company which that person is not authorized by that company to obtain. The intent required for a violation of this paragraph may be inferred from proof that, as a matter of standard procedure, the company places written warning labels on its telecommunications devices explaining that tampering with the device is a violation of law and the device is found to have been tampered with, altered or modified so as to allow the reception of services offered by the company without authority to do so.
  - (5) Possess without authority any device designed to receive from a company and services offered for sale by that company, whether or not the services are encoded, filtered, scrambled or otherwise made unintelligible, or designed to perform or facilitate the performance of any of the acts under pars. (1) and (4) with the intent that the device be used to receive that company's services without payment. Intent to violate this paragraph for direct or indirect commercial advantage or private financial gain maybe inferred from proof of the existence on the property and in the actual possession of the defendant of a device if the totality of circumstances, including quantities or volumes, indicates possession for resale.
  - (6) Manufacture, import into this state, distribute, publish, advertise, sell, lease or offer for sale or lease any device or any plan or kit for a device designed to receive cellular telephone services offered for sale by a company, whether or not the services are encoded, filtered, scrambled or otherwise made unintelligible, with the intent that the device, plan or kit be used for obtaining a company's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the defendant has sold, leased or offered for sale or lease any device, plan or kit for a device in violation of this paragraph and during the course of the transaction for sale or lease the defendant expressly states or implies to the buyer that the product will enable the buyer to obtain cellular telephone service without charge.
- (d) **EXCEPTION.** This section does not affect the use by a person of cellular telephone services if the services have been paid for.

### **SEC. 11-3-13 THEFT OF SATELLITE CABLE PROGRAMMING.**

- (a) **DEFINITIONS.** In this section:
  - (1) "Encrypt", when used with respect to satellite cable programming, means to transmit that programming in a form whereby the aural or visual characteristics or both are altered to prevent the unauthorized reception of that programming by persons without authorized equipment which is designed to eliminate the effects of that alteration.
  - (2) "Satellite cable programming" means encrypted video programming which is transmitted via satellite for direct reception by satellite dish owners for a fee.
- (b) **PROHIBITIONS.** No person may decode encrypted satellite cable programming without authority.

- (c) **EXCEPTION.** This section does not affect the use by a person of satellite cable programming if the programming has been paid for and the use is exclusive to the person's dwelling unit.

## **SEC. 11-3-14 THEFT OF CABLE TELEVISION SERVICE.**

- (a) **DEFINITIONS.** In this section:

- (1) "Cable television service" has the meaning given in Wis. Statutes 196.01(1p). "Cable television service" does not include signals received by privately owned antennas that are not connected to a cable television system whether or not the same signals are provided by a cable television company.
- (2) "Private financial gain" does not include the gain resulting to any individual from the private use in that individual's dwelling unit of any programming for which the individual has not obtained authorization.

- (b) **PROHIBITIONS.** No person may intentionally do any of the following:

- (1) Obtain or attempt to obtain cable television service from a company by trick, artifice, deception, use of an illegal device or illegal decoder or other fraudulent means with the intent to deprive that company of any or all lawful compensation for rendering each type of service obtained. The intent required for a violation of this paragraph may be inferred from the presence on the property and in the actual possession of the defendant of a device not authorized by the cable television company, the major purpose of which is to permit reception of cable television services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use.
- (2) Give technical assistance or instruction to any person in obtaining or attempting to obtain any cable television service without payment of all lawful compensation to the company providing that service. This paragraph does not apply if the defendant demonstrates that the technical assistance or instruction was given or the installation of the connection, descrambler or receiving device was for a legitimate use.
- (3) Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of distributing cable television service to any other dwelling unit without authority from a cable television company.
- (4) Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of obtaining cable television service without payment of all lawful compensation to the company providing that service. The intent required for a violation of this paragraph may be inferred from proof that the cable service to the defendant's residence or business was connected under a service agreement with the defendant and has been disconnected by the cable television company and that thereafter there exists in fact a connection to the cable system at the defendant's residence or business.
- (5) Make or maintain any modification or alteration to any device installed with the authorization of a cable television company for the purpose of intercepting or receiving any program or other service carried by that company which that person is not authorized by that company to receive. The intent required for a violation of this paragraph may be inferred from proof that, as a matter of standard procedure, the cable television company places written warning labels on its converters or decoders explaining that tampering with the device is a violation of law and the converter or decoder is found to have been tampered with, altered or modified so as to allow the



reception or interception of programming carried by the cable television company without authority to do so. The trier of fact may also infer that a converter or decoder has been altered or modified from proof that the cable television company, as a matter of standard procedure, seals the converters or decoders with a label or mechanical device, that the seal was shown to the customer upon delivery of the decoder and that the seal has been removed or broken. The inferences under this paragraph are rebutted if the cable television company cannot demonstrate that the intact seal was shown to the customer.

- (6) Possess without authority any device or printed circuit board designed to receive from a cable television system any cable television programming or services offered for sale over that cable television system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, or perform or facilitate the performance of any of the acts under pars. (1) and (5) with the intent that the device or printed circuit be used to receive that cable television company's services without payment. Intent to violate this paragraph for direct or indirect commercial advantage or private financial gain may be inferred from proof of the existence on the property and in the actual possession of the defendant of a device if the totality of circumstances, including quantities or volumes, indicates possession for resale.
- (7) Manufacture, import into this state, distribute, publish, advertise, sell, lease or offer for sale or lease any device, printed circuit board or any plan or kit for a device or for a printed circuit designed to receive the cable television programming or services offered for sale over a cable television system from a cable television system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, with the intent that the device, printed circuit, plan or kit be used for the reception of that company's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the defendant has sold, leased or offered for sale or lease any device, printed circuit board, plan or kit for a device or for a printed circuit board in violation of this paragraph and during the course of the transaction for sale or lease the defendant expressly states or implies to the buyer that the product will enable the buyer to obtain cable television service without charge.
- (d) **EXCEPTION.** This section does not affect the use by a person of cable television services if the services have been paid for and the use is exclusive to the person's dwelling unit. This subsection does not prohibit a board or a council of any city, village or town from specifying the number and manner of installation of outlets used by any such person for cable television services and does not prohibit a cable television company, in any written contract with a subscriber, from requiring the company's approval for an increase in the number of those outlets used.