

Chapter 2

Offenses Against Public Safety and Peace

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Sec. 11-2-1 Regulation of Firearms and Explosives.

- (a) **Discharge of Firearms and Guns Regulated.** No person shall fire or discharge any cannon, gun, pistol, air or spring gun or any firearm of any description within the City of Onalaska without having first obtained written permission from the Chief of Police, which permission shall limit the time and fix the place of such shooting and shall be subject to be revoked at any time after the same may have been granted, except this section shall not be construed to prohibit the discharge of firearms by the Sheriff or any of his deputies, the Chief of Police or any of his subordinates or any public officer when required and made necessary in the performance of any duty imposed by law.
- (b) **Shooting Into City Limits.** No person shall in the territory adjacent to the City discharge any firearm in such manner that the discharge shall enter or fall within the City.
- (c) **Shooting Ranges.** This section shall not prevent the maintenance and use of duly supervised rifle or pistol ranges or shooting galleries approved by the Common Council, after an advisory recommendation from the Chief of Police, where proper safety precautions are taken.
- (d) **Explosive Devices.** No person shall discharge or detonate any dynamite, nitroglycerin or other explosive within the City without first obtaining a permit to do so from the Chief of Police.

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- (e) **Hunting Prohibited.** Hunting is prohibited within the corporate limits of the City of Onalaska.
- (f) **Definitions.** For purposes of this Section, a firearm is defined as any instrumentality from or with which a shot, bullet or pellet may be discharged or expelled, regardless of whether the propelling force is provided by air, spring or other similar mechanical device, or gun powder.

Sec. 11-2-2 Carrying Concealed Weapons Prohibited; Certain Weapons Prohibited.

- (a) **Concealed Weapons Prohibited.**
 - (1) No person shall within the City wear or in any manner carry under his/her clothes or conceal upon or about his/her person any deadly or dangerous weapon, provided this Subsection shall not apply to a peace officer or such persons as may be authorized to carry such weapons.
 - (2) "Dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.
- (b) **Concealed Weapons in Public Establishments.** No person shall carry or be possessed of a dangerous weapon in any public building or business establishment open to the public except a bona fide weapons repair, display or sales establishment, unless such dangerous weapon is so stored and concealed (other than on the person) so as not to be readily accessible to any person or patron. This Subsection shall not apply to peace officers or others duly authorized by law acting within the scope of their duties. This Subsection shall not be construed to prohibit the sale, purchase, repair or trade of firearms by a retail business establishment doing so in the course of its regular business in accord with state and federal law, nor to hinder a prospective customer from attempting to buy, sell or trade firearms to or from a retailer.
- (c) **Specific Concealed Weapons Prohibited.** No person, except a sheriff, constable, police officer or other law enforcement officer acting within the scope of their duties, shall carry or wear concealed about his person any pistol, revolver, firearm, sling shot, cross-knuckle of lead, brass or other materials, bowie knife, switchblade, dirk or dagger or any other dangerous or deadly weapon within the City.
- (d) **Possession, Sale and Manufacture of Certain Weapons Prohibited.**
 - (1) No person shall sell, manufacture, purchase, possess or carry a "Numchuk" (also called a "Nunchaku") or a "Churkin" or a "Suchai" or similar weapon within the City of Onalaska.
 - (2) For the purpose of this Section, the following definitions shall apply:
 - a. **"Numchuk" or "Nunchaku."** An instrument consisting of two (2) or more sticks, clubs or rods connected by a rope, cord, wire or chain.

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- b. "**Churkin.**" A round throwing knife consisting of several sharp points protruding from a rounded disc.
 - c. "**Suchbai.**" A short length of wood or metal or similar material which when gripped in the hand protrudes on either side of the fist. Such prohibited instrument may or may not have spikes or short pointed protrusions from either end.
- (3) Any such device shall be seized by a law enforcement officer and destroyed or turned over to the State of Wisconsin Crime Laboratory for destruction.

Sec. 11-2-3 Safe Use and Transportation of Firearms and Bows.

(a) **Definitions.** In this Section:

- (1) **Aircraft** has the meaning given under Sec. 114.002(3), Wis. Stats.
- (2) **Encased** means enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied or otherwise fastened with no part of the firearm exposed.
- (3) **Firearm** means a weapon that acts by force of gunpowder.
- (4) **Highway** has the meaning given under Sec. 340.01(22), Wis. Stats.
- (5) **Motorboat** has the meaning given under Sec. 30.50(6), Wis. Stats.
- (6) **Roadway** has the meaning given under Sec. 340.01(54), Wis. Stats.
- (7) **Unloaded** means any of the following:
 - a. Having no shell or cartridge in the chamber of a firearm or in the magazine attached to a firearm.
 - b. In the case of a cap lock muzzle-loading firearm, having the cap removed.
 - c. In the case of a flint lock muzzle-loading firearm, having the flash-pan cleaned of powder.
- (8) **Vehicle** has the meaning given under Sec. 340.01(74), Wis. Stats., and includes a snowmobile, as defined under Sec. 340.01(58a), Wis. Stats.

(b) **Prohibitions; Motorboats and Vehicles; Highways and Roadways.**

- (1) Except as provided in Subsection (c), no person may place, possess or transport a firearm, bow or crossbow in or on a motorboat with the motor running, unless the firearm is unloaded or unless the bow or crossbow is unstrung or is enclosed in a carrying case.
- (2) Except as provided in Subsection (c), no person may place, possess or transport a firearm, bow or crossbow in or on a vehicle, unless the firearm is unloaded or unless the bow or crossbow is unstrung or is enclosed in a carrying case.
- (3) Except as provided in Subsection (c), no person may load or discharge a firearm or shoot a bolt or an arrow from a bow or crossbow in or from a vehicle.
- (4) Except as provided in Subsection (c), no person may load or discharge a firearm or shoot a bolt or an arrow from a bow or crossbow from or across a highway or within fifty (50) feet from the center of a road.

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(5) A person who violates Subsections (1) through (4) above is subject to a forfeiture of not more than One Hundred Dollars (\$100.00).

(c) **Exceptions.**

- (1) Subsection (b) does not apply to any of the following who, in the line of duty, place, possess, transport, load or discharge a firearm in, on or from a vehicle, motorboat or aircraft or discharge a firearm from or across a highway or within fifty (50) feet of the center of a roadway:
 - a. A peace officer, as defined under Sec. 939.22(22), Wis. Stats.
 - b. A member of the U.S. armed forces.
 - c. A member of the National Guard.
- (2) Subsections (b)(1), (2) and (3) do not apply to the holder of a scientific collector permit under Sec. 29.17, Wis. Stats., who is using a net gun or tranquilizer gun in an activity related to the purpose for which the permit was issued.
- (3) Subsections (b)(2) and (3) do not apply to the holder of a permit under Sec. 29.09, WI Stats., who is hunting from a standing automobile in accordance with that Subsection.

Sec. 11-2-4 Throwing or Shooting of Arrows, Stones and Other Missiles Prohibited.

It shall be unlawful for any person to discharge or throw by any means any dangerous missile, object, arrow, stone, snowball or other missile within the City of Onalaska, provided, however, upon written application to the Chief of Police and Common Council, a person may be granted permission by the Common Council to construct and maintain supervised non-commercial archery ranges if, in the opinion of the Common Council, the construction or maintenance of such ranges will not endanger the public health and safety.

Sec. 11-2-5 Harassing or Obscene Telephone Calls.

Whoever commits any of the following acts shall be subject to the general penalty as provided in this Municipal Code:

- (a) Makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious or indecent;
- (b) Makes a telephone call, whether or not conversation ensues, with the intent to abuse, threaten or harass any person at the called number or numbers;
- (c) Makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number or numbers;
- (d) Makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number or numbers;

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- (e) Knowingly permits any telephone under his control to be used for any purpose prohibited by this Section;
- (f) In conspiracy or concerted action with other persons, makes repeated calls or simultaneous calls solely to harass any person at the called number or numbers.

Sec. 11-2-6 Sale and Discharge of Fireworks Restricted.

No person shall sell, expose or offer for sale, use, keep, discharge or explode any fireworks within the City limits of the City of Onalaska unless he shall be authorized by a fireworks permit as provided for in Title 7, Chapter 7 of this Code of Ordinances. Fireworks shall be defined as set forth in Section 7-7-1(1). The penalty for a violation of this Section shall be as set forth in Section 7-7-1(6).

Sec. 11-2-7 Obstructing Streets and Sidewalks Prohibited.

- (a) **Obstructing Streets.** No person shall stand, sit, loaf or loiter or engage in any sport or exercise on any public street, bridge or public ground within the City in such manner as to prevent or obstruct the free passage of pedestrian or vehicular traffic thereon or to prevent or hinder free ingress or egress to or from any place of business or amusement, church, public hall or meeting place.
- (b) **Blocking Sidewalk Prohibited.** No person shall block any sidewalk by obstructing the same so that it is impossible for a pedestrian to travel along the sidewalk without leaving the sidewalk and walking on adjacent property or on the street.
- (c) **Free Speech.** This Section shall not be interpreted as prohibiting any person from stopping on any sidewalk to talk or to make a speech, provided that such person shall not stand in such a location that it is impossible for any pedestrian to travel along the sidewalk without leaving the sidewalk and walking on adjacent property or on the street. If two (2) or more persons are engaged in talking while stopped on a sidewalk, they shall not stand in such locations as to completely prevent any pedestrian from passing them on the sidewalk.
- (d) **Definitions.** As used in this Section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:
 - (1) **Block.** To interfere with unobstructed travel by any means, including but not limited to standing on the part of the walk that is fit for travel, or placing any object or vehicle whatsoever on such walk.
 - (2) **Sidewalk.** Any sidewalk owned or maintained by the City. The term shall not include sidewalks or walkways on private property in shopping centers, apartment complexes, office building sites or any other private property.

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Sec. 11-2-8 Loitering Prohibited.

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

Sec. 11-2-9 Loud and Unnecessary Noise Prohibited.

- (a) **Loud and Unnecessary Noise Prohibited.** It shall be unlawful for any person to make, continue or cause to be made or continued any loud and unnecessary noise.
- (b) **Types of Loud and Unnecessary Noises.** The following acts are declared to be loud, disturbing and unnecessary noises in violation of this Section, but this enumeration shall not be deemed to be exclusive:
 - (1) **Horns, signaling devices.** The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place in the City for longer than three (3) seconds in any period of one (1) minute or less, except as a danger warning; the creation of any unreasonable loud or harsh sound by means of any signaling device and the sounding of any plainly audible device for an unnecessary and unreasonable period of time; the use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust and the use of any signaling device when traffic is for any reason held up.
 - (2) **Radios, phonographs, similar devices.** The using, operating or permitting to be played, used or operated any radio receiving set; musical instrument, phonograph or other machine or device for the producing or reproducing of sound in a loud and unnecessary manner. The operation of any set, instrument, phonograph, machine or device between the hours of 10:00 p.m. and 7:00 a.m. in a manner as to be plainly audible at the properly line of the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this Section.
 - (3) **Loudspeakers, amplifiers for advertising.** The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph,

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- loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting attention of the public to any building or structure. Announcements over loudspeakers can only be made by the announcer in person and without the aid of any mechanical device.
- (4) **Animals, birds.** The keeping of any animal or bird which causes frequent or long continued unnecessary noise.
 - (5) **Steam whistles.** The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of proper City authorities.
 - (6) **Exhausts.** The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine or motor boat except through a muffle or other device which will effectively prevent loud or explosive noises therefrom.
 - (7) **Construction or repair of buildings.** The erection (including excavation), demolition, alteration or repair of any building, as well as the operation of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or any other similar equipment attended by loud or unusual noise, other than between the hours of 7:00 a.m. and 10:00 p.m. on weekdays; provided, however, the Building Inspector shall have the authority, upon determining that the loss of inconvenience which would result to any party in interest would be extraordinary and of such nature as to warrant special consideration, to grant a permit for a period necessary within which time such work and operation may take place within the hours of 10:00 p.m. to 7:00 a.m.
 - (8) **Schools, courts, churches, hospitals.** The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while in use, or adjacent to any hospital, which unreasonably interferes with the normal operation of that institution, or which disturbs or unduly annoys patients in the hospital provided that conspicuous signs are displayed in those streets indicating a school, hospital or court street.
 - (9) The provisions of this Section shall not apply to:
 - a. Any vehicle of the City while engaged in necessary public business.
 - b. Excavations or repairs of streets or other public construction by or on behalf of the City, County, or State at night when public welfare and convenience renders it impossible to perform such work during the day.
 - c. The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in nature.
- (c) **Stationary Noise Limits.**
- (1) **Maximum Permissible Sound Levels.**
 - a. Noise from a stationary source shall not exceed the following standards for maximum sound pressure levels measured at the property line.

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Zone	Noise Rating-Daytime	Noise Rating-Nighttime
Residential	75 db	65 db
Commercial	85 db	75 db
All Other Zones	75 db	75 db

- b. Ambient noise is the all-encompassing noise associated with a given source, usually being a composite of sounds with many sources near and far, but excluding the noise source being measured. Ambient noise is a factor and the subject noise shall exceed the ambient noise by 5 db in any octave band to be designated excessive.
 - c. Pure tones and impulsive noises are factors. Five noise rating numbers shall be taken from the table in Subsection a. above, if the subject noise consists primarily of a pure tone or if it is impulsive in character.
- (2) **Construction Noise.** Construction equipment in any zone may be operated between the hours of 7:00 a.m. and 7:00 p.m. provided that said equipment does not exceed a maximum sound level of 80 db(a) measured at the property line of the location at which said equipment is in use.
 - (3) **Noise in Residential Districts.** In Residential Zones, the person in violation of this Section shall be ordered to reduce the sound pressure to acceptable levels immediately by the monitoring officer.
 - (4) **Operation of Certain Equipment.** Lawnmowers, chainsaws, powered garden equipment, electric insect killing/repelling devices, and other non-construction maintenance equipment shall be operated only during the hours between 7:00 a.m. and 9:00 p.m. unless within the specified noise levels measured at the property line of the location at which said equipment is in use.
 - (5) **Exemptions.** Operations of emergency equipment shall be exempt from this Chapter. Snowblowers not operated on a commercial basis shall be exempt from this Chapter when used to gain access to a City street. Emergency equipment shall include ambulance, police, fire, snow removal, civil defense sirens, etc., necessary for the health, safety, and protection of the citizens of the City.
 - (6) **Methods of Measuring Noise.**
 - a. Equipment. Noise measurement shall be made with a sound level meter.
 - b. Location of Noise Meter. Noise measurement shall be made at the nearest lot line of the premises from which a noise complaint is received. The noise meter shall be placed at a height of at least three (3) feet above the ground and at least three (3) feet away from walls, barriers, obstructions, and all other sound reflective surfaces.
 - (7) **Appeals.** The Common Council may grant an exemption to individuals proving evidence of substantial hardship. Evidence that reasonable technological attempts have been made to correct the problem shall be considered grounds for granting an exemption to this Chapter for existing industries.

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(d) **Permits for Amplifying Devices.**

- (1) **Permit Required.** The use of loudspeakers or amplifying devices on the streets or in the parks of the City of Onalaska is prohibited unless the party desiring to use such loudspeaker or amplifying device first obtains a permit from the Chief of Police.
- (2) **Grounds or Reasons for Denial or Allowance.** The Chief of said Police Department shall have the authority to revoke such permit when he believes such loudspeaker or amplifying device is becoming a nuisance because of the volume, the method in which it is being used or the location in which it is being operated.
- (3) **Time Restrictions.** The Chief of the Police Department shall not grant a permit to use a loudspeaker or amplifying device before the hours of 9:00 a.m. or after 10:00 p.m. No permit shall be granted to anyone who, in the opinion of the Chief of Police, uses said loudspeaker or amplifying device in such a manner or for such a purpose as to constitute a nuisance.

Sec. 11-2-10 **Disorderly Conduct.**

- (a) **Disorderly Conduct Prohibited.** No person within the City of Onalaska shall:
 - (1) In any public or private place engage in violent, noisy, riotous, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to cause or provoke an immediate disturbance of public order or tends to annoy or disturb any other person.
 - (2) Intentionally cause, provoke or engage in any fight, brawl, riot or noisy altercation other than a bona fide athletic contest.
- (b) **Defecating or Urinating in Public Places.** It shall be unlawful for any person to defecate or urinate outside of designed sanitary facilities, upon any sidewalk, street, alley, public parking lot, park, playground, cemetery or other public area within the City, or upon any private property in open view of the public, or in the halls, rooms without restroom facilities, stairways or elevators of public or commercial buildings, or to indecently expose his person.

Sec. 11-2-11 **Possession of Controlled Substances.**

- (a) **Controlled Substances.** It shall be unlawful for any person to possess a controlled substance contrary to the Uniform Controlled Substances Act, Chapter 961 of the Wisconsin Statutes.
- (b) **Possession of Marijuana.** No person shall possess any amount of marijuana, tetrahydrocannabinol or any derivative thereof, unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a licensed physician or pharmacist for a valid medical purpose.

State Law Reference: Chapter 961, Wis. Stats.

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Sec. 11-2-12 Unauthorized Presence on School Property Prohibited.

- (a) It shall be unlawful for any person, except as provided in Subsection (b) hereof, to be present in, loiter or enter into any public school building, school parking lot or on any public school grounds without the permission of the school principal, custodian or other person in charge thereof between 7:30 a.m. and 4:30 p.m. on official school days.
- (b) This Section shall not apply to:
 - (1) Students regularly enrolled in public schools who have not been properly ordered by the school principal, custodian or other person in charge thereof to leave the school building or school grounds;
 - (2) Persons coming into the school building or school grounds for the purpose of attending scheduled school or civic functions, or making use of the recreational facilities located upon or within school premises, but as to such attendance or use, this exception shall apply only to the portion of the premises on which facilities are located and during the hours such facilities are specifically open to the general public or an invited portion thereof;
 - (3) Parents or legal guardians of a regularly enrolled student. However, such parent or legal guardian may be required to register at the school office.
- (c) The exceptions set forth in Subsection (b) shall not apply to any person who, while in school buildings or on school grounds, commits or attempts to commit any act prohibited by statute or ordinance.
- (d) All entrances to the school buildings shall be posted with a notice stating "Entry Into School Building by Unauthorized Persons Prohibited." All school grounds shall be posted with a notice stating "Entry Upon School Grounds by Unauthorized Persons Prohibited."

Sec. 11-2-13 Hours for Playing Ball.

- (a) It shall be unlawful for any person to play ball or to be engaged at playing any game or amusement upon the City of Onalaska school play grounds and outdoor basketball courts after the hour of 10:30 p.m. and prior to 7:00 a.m.
- (b) It shall be unlawful for any person to play ball or to be engaged at playing any game or amusement upon the City of Onalaska school play grounds, property, outdoor basketball courts or upon private property if said game, amusement or activity shall excessively annoy or, in an unreasonable manner, interfere with the passage of persons, bicycles or vehicles upon or along any of the streets, alleys, sidewalks or public grounds of the City of Onalaska.

Sec. 11-2-14 Failure to Obey Lawful Order.

It shall be unlawful for any person to fail to obey the direction or order of a police officer while such police officer is acting in an official capacity in carrying out his or her duties.

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Sec. 11-2-15 Fortune Telling Prohibited.

No person, persons or body of persons shall practice or pretend to practice the business or pretended business of fortune telling, palmistry, card reading and the like, as such, and no person or persons or body of persons shall advertise or pretend to foretell future events for a fee or other compensation.

Sec. 11-2-16 Interference With Television, Radio or Telephone Reception.

- (a) It shall be unlawful for any person to knowingly operate or cause to be operated any machine, device, apparatus or device of any kind whatsoever within the corporate limits of the City if said operation creates electrical, electromagnetic or radio-wave interference with radio, television or telephonic (including modem) reception within the City. This prohibition does not apply to machine, apparatus or device operated by police, fire, or other emergency services.
- (b) This ordinance shall not be construed to embrace or cover the regulation of any transmitting, broadcasting or receiving instrument, device or apparatus that is licensed by or under the provisions of any state or federal regulation.
- (c) The penalty provisions of Section 1-1-7 of the Code of Ordinances of the City of Onalaska shall apply to any violation of this section.

Sec. 11-2-17 Smoke Free Restaurant Regulations.

- (a) **Intent and Purpose.** The City Council declares that this Ordinance is not intended to include establishments traditionally known as bars or taverns.
- (b) **Definitions.**
 - (1) "Accessory Seating" can include tables and chairs or booths in the immediate vicinity of the bar.
 - (2) "Documentation" shall be no less than a letter from the business establishment's accountant that identifies the source of sales that come from food, alcohol and other category.
 - (3) "Full Service Bar" means a counter-like object with accessory seating for customers, over which fermented malt beverages, intoxicating liquors or wine are sold for consumption upon the premises. A service bar without accessory seating for customers shall not be considered a full service bar.
 - (4) "Full Service Bar Area" means the full service bar and the area immediately adjacent to the full service bar.
 - (5) "Private Club" means churches, religious, fraternal, youths' or patriotic organizations, service clubs or civic organizations which prepare and serve or sell meals to members and guests only. When a private club is open to the public it does not meet this definition.
 - (6) "Restaurant" shall mean an establishment as defined in Section 254.61(5), Wisconsin Statutes.

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- (7) "Review Committee" shall consist of one (1) representative from the Local Tavern League, one (1) representative from the Local Restaurant Association, one (1) representative of the County Health Department, one (1) City citizen member, and one (1) City of Onalaska Council Member. The representatives of the Local Tavern League and Local Restaurant Association shall be chosen by the respective associations, as well as the representative of the La Crosse County Health Department chosen by the La Crosse County Health Board. The City resident citizen member and Council Member shall be appointed by the Mayor subject to confirmation by the Common Council. The terms of office for such committee members shall be for a period of two (2) years.
 - (8) "Room" shall mean a space within a building completely enclosed with walls, partitions, floor and ceiling, except for openings for light, ventilation, ingress and egress.
 - (9) "Separately ventilated" shall mean that the area is ventilated so that there is a negative air pressure in the designated smoking area.
 - (10) "Service Bar" means an area without accessory seating for customers, at which fermented malt beverages or intoxicating liquors are prepared for service with meals.
 - (11) "Smoking" shall mean to smoke or carry a lighted pipe, cigar, cigarette or tobacco-related product in any form.
- (c) Except as provided in paragraph (1) below or any other provision of the Code of Ordinances,, it shall be unlawful for any person to smoke tobacco products in all enclosed, indoor areas of restaurants.
- (1) **Exceptions.**
 - (i) Full service bar area and accessory seating.
 - (ii) The owner or proprietor may designate a smoking room which is separately ventilated from each and every other area of the establishment.
 - (iii) *Restaurants.*
 1. *Restaurants with class B license whose sale of alcoholic beverages account for more than 50% compared to the sale of food for the most recent alcohol licensing year shall comply with Sec. 101.123, Wisconsin Statutes, the Clean Indoor Air Act.*
 2. Upon request of the Chief of Police or the City Clerk's office, owners of restaurants shall provide the necessary documentation to the Review Committee to apply for exception under (c)(1)(iii)1.
 - (iv) Private clubs. Private clubs shall provide a nonsmoking section for customers and otherwise comply with Sec. 101.123, Wisconsin Statutes, the Clean Indoor Air Act.
 - (v) An owner of a restaurant may be granted an exception from the requirements of this ordinance by:
 1. Showing that the business has experienced a loss of fifteen percent (15%) in the first three (3) months (March 1, 2002 - May 31, 2002) compared to the same three (3) months of the previous year (March 1, 2001-May 31, 2001).
 2. Showing that any decrease in business has resulted to the business of the restaurant as a result of complying with the provisions of this ordinance for a period of not less than six (6) months. Written

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proof by an accountant not employed by the business establishment shall be required. The owner shall provide a comparison of sales receipts during said six (6) months of compliance as compared with sales receipts for the same six (6) months of the year prior to compliance; or

3. It shall be the responsibility of the owner of the restaurant to demonstrate that the restaurant has complied with this ordinance and that any business losses were the result of compliance with this ordinance and not as a result of other factors unrelated to this ordinance.
 4. Application for exemption shall be made to the five (5) member Review Committee.
 5. This hardship provision shall only be effective for a period of twelve (12) months after the effective date of this ordinance (March 1, 2002-February 28, 2003). Applications for hardship may be received until May 15, 2003; however, the provision shall only apply to losses incurred prior to, and including February 28, 2003.
 6. Once hardship is determined it will be in force for five (5) years and then a reapplication process must occur.
- (d) Signs prohibiting, prohibiting except in designated areas, or permitting smoking, as the case may be, shall be posted conspicuously at every entrance and in prominent locations throughout the premises by the proprietor or other person in charge of each building, structure or public place. Signs shall contain a reference that regulation is by ordinance, such as “No Smoking - City Ordinance #,,:” “Smoking Prohibited by City Ordinance Except in Designated Areas”, or equivalent. The proprietor or other persons in charge of premises regulated hereunder shall further make reasonable efforts to prevent smoking in prohibited areas by:
- (1) Approaching smokers who fail to voluntarily comply with this section and request that they extinguish their smoke and to refrain from smoking upon witnessing the same or upon request of any person.
 - (2) Any other means which may be deemed appropriate by said proprietor, including refusal of service to anyone smoking in a prohibited public area.
- (e) Restaurants shall post, in a conspicuous place at each entrance normally used by the public, a sign not smaller than eleven by eight and one-half inches (11” x 8 ½”) indicating whether they are smoke-free. Each sign shall contain a non-emergency number for the City Police Department.
- (f) It shall be unlawful for any person to remove, deface, or destroy any legally required “No Smoking” sign, or to smoke in any place where any such sign is posted.
- (g) It shall be the duty of the Director of Inspections or designee, and/or the Chief of Police or designee, and they shall have the power, whenever they may deem it necessary, to enter upon the premises described in this section to ascertain whether signs required are

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posted, and to order the posting of such signs where required. A compliance time of not less than one week shall be granted. Upon failure to comply with such written or verbal order, a citation may be issued. This enforcement procedure shall be supplementary to any other remedies provided by law.

(h) **Penalty.**

- (1) Any owner or proprietor of an establishment who violates any provision of this section shall be required to forfeit not less than ten dollars (\$10) nor more than fifty dollars (\$50) plus costs. Each day of violation shall constitute a separate violation.
- (2) Any customer of an establishment who violates any provision of this section for the first time shall be required to forfeit not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) plus costs. For a violation committed within twelve (12) months of a previous violation, a customer shall be required to forfeit not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) plus costs.
- (3) Any person not designated in subsections (h)(1) and (h)(2) above who violates any provision of this ordinance for the first time shall be required to forfeit not less than ten dollars (\$10) nor more than fifty dollars (\$50) plus costs. For a violation committed within twelve (12) months of a previous violation, a person shall be required to forfeit not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) plus costs.

- (i) **Severability.** The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared to be the intent of the Common Council that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein.

