

## Title 11 ► Chapter 3

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# Offenses Against Property

<b>11-3-1</b>	Destruction of Property Prohibited
<b>11-3-2</b>	Littering Prohibited
<b>11-3-3</b>	Abandoned Refrigerators Prohibited
<b>11-3-4</b>	Theft of Library Material
<b>11-3-5</b>	Damage to Public Property
<b>11-3-6</b>	Retail Theft
<b>11-3-7</b>	Issuance of Worthless Checks
<b>11-3-8</b>	Trespass to a Dwelling or Land
<b>11-3-9</b>	Regulation of Smoking
<b>11-3-10</b>	Theft Prohibited
<b>11-3-11</b>	Fraud on Residential Landlords Prohibited
<b>11-3-12</b>	Graffiti
<b>11-3-13</b>	Cemetery Regulations

### **Sec. 11-3-1 Destruction of Property Prohibited.**

- (a) **Destruction of Property.** No person shall willfully injure or intentionally deface, destroy, or unlawfully remove or interfere with any property belonging to the Village of Merrillan, the Alma Center-Merrillan-Humbird School District, or to any private person without the consent of the owner or proper authority, nor shall any person or organization place or permit to be placed any sign, poster, advertisement, notice, or other writing upon any utility ornamental light pole belonging to the Village without the consent of proper authority. Any signs, posters, advertisements, notices, or other writings so placed shall be removed by law enforcement authorities and the placing person or organization cited for violation of this Section.
- (b) **Parental Liability.** Pursuant to Sec. 895.035, Wis. Stats., the parents of an unemancipated minor shall be liable for the damage of property caused by the willful, malicious or wanton act of such child; such liability shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00).
- (c) **Penalty Provisions.**
- (1) Any person eighteen (18) years of age or over who violates this Section is subject to a penalty as provided in Section 1-1-6, restitution to the injured party, and the costs of prosecution.

**11-3-1**

- (2) Any person twelve (12) years of age to seventeen (17) years of age shall be subject to a forfeiture not to exceed Twenty-five Dollars (\$25.00) and any other applicable penalty provided by Sec. 48.344, Wis. Stats., as that Section may exist, be amended or changed.
- (d) **Victim Remedies.** Any person or entity injured by a violation of this Section by a minor child shall be advised of the rights and remedies available under Sec. 895.035, Wis. Stats.

**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 Village of Merrilan, or upon property within the Village owned by the Alma Center-Merrillan-Humbird School District or any private person, or upon the surface of any body of water within the Village.
- (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 litterer'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 Village shall arrange to have the same picked up by Village crews or by private enterprise. 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 Village 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) **Depositing of Materials Prohibited.** It shall be unlawful for any person to deposit, cause or permit to be deposited, placed or parked any vegetation, grass, leaves, foliage, earth, sand, gravel, water, snow, ice, debris, waste material, foreign substance, construction materials, equipment or object upon any street, sidewalk or public property without authorization of the Village Board, Maintenance Superintendent, Village Marshal, Zoning Administrator or Building Inspector to the provisions of this Code of Ordinances, or upon

any private property without the consent of the owner or lessee of the property. Any person who deposits, causes or permits to be deposited, placed or parked any such materials, equipment or objects upon any street, sidewalk or property shall be responsible to properly mark or barricade the area so as to prevent a safety hazard.

(d) **Handbills.**

- (1) **Scattering Prohibited.** It shall be unlawful to deliver any handbills or advertising material to any premises in the Village 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 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/her 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/her agent and is securely locked or fastened.

### **Sec. 11-3-4 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 within the Village of Merrilan and school libraries.
  - (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 and/or Village Marshal or Village Attorney, 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 with 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 law enforcement 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 law enforcement 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 book, periodical, pamphlet, picture or other article or property belonging to or in charge of the library. Any person convicted of violating this Subsection shall be subject to the penalties as set forth in Section 1-1-6.
- (f) **Return Demanded.** No person shall fail, on demand, to return any book periodical, pamphlet, picture or other articles or property belonging to or in charge of the Public Library according to the rules or regulations duly made and adopted by the Library Board and no person shall remove from the library any book, periodical, pamphlet, picture or other articles or property without first having it charged as provided by such rules and regulations. Any person convicted of violating any provision of this Subsection shall be subject to the penalties as set forth in Section 1-1-6.

*State Law Reference:* Sec. 943.61, Wis. Stats.

### **Sec. 11-3-5 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 Village of Merrilan.
- (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 Village.
- (c) **Damaging Fire Hydrants and Water Mains.** No person shall, without the authority of Village authorities, operate any valve connected with the street or water supply mains, or open any fire hydrant connected with the water distribution system, except for the purpose of extinguishing a fire. No person shall injure or impair the use of any water main or fire hydrant.

### **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 Subsection (d).
- (b) The intentional concealment of unpurchased 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 unpurchased 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) A merchant or merchant's adult employee who has probable cause for believing that a person has violated this Section in his/her presence may detain such person in a reasonable manner for a reasonable length of time to deliver him/her to a law enforcement officer, or to his/her 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/she shall not be interrogated or searched against his/her will before the arrival of a law enforcement officer who may conduct a lawful interrogation of the accused person. Compliance with this Subsection entitles the merchant or his/her 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.
- (d) If the value of the merchandise does not exceed One Hundred Dollars (\$100.00), any person violating this Section shall forfeit not more than One Thousand Dollars (\$1,000.00). If the value of the merchandise exceeds One Hundred Dollars (\$100.00), this Section shall not apply and the matter shall be referred to the District Attorney for criminal prosecution.

*State Law Reference:* Sec. 943.50, Wis. Stats.

## Sec. 11-3-7 Issuance of Worthless Checks.

- (a) **Violations.** Whoever issues any check or other order for the payment of money less than One Thousand Dollars (\$1,000.00) which, at the time of issuance, he or she intends shall not be paid is guilty of a violation of this Section.
- (b) **Prima Facie Evidence.** Any of the following is prima facie evidence that the person at the time he or she issued the check or other order for payment of money intended it should not be paid:
  - (1) Proof that, at the time of issuance, the person did not have an account with the drawee; or
  - (2) Proof that, at the time of issuance, the person did not have sufficient funds or credit with the drawee and that the person failed within five (5) days after receiving notice of non-payment or dishonor to pay the check or other order; or
  - (3) Proof that, when presentment was made within a reasonable time, the person did not have sufficient funds or credit with the drawee and the person failed within five (5) days after receiving notice of non-payment or dishonor to pay the check or other order.
- (c) **Exceptions.** This Section does not apply to a post-dated check or to a check given in past consideration, except a payroll check.
- (d) **Returned Check Fee.** In the event a person issues a check to the Village, and does not have sufficient funds or credit such that the check is returned unpaid, such person shall pay the check or other order and shall also pay a fee of Twenty Dollars (\$20.00), representing the cost of additional administrative expense which results from non-payment of the original obligation.
- (e) **Penalties.**
  - (1) In addition to any other penalties provided for under Section 1-1-6, a Judge may order a violator of this Section to pay restitution to a victim. In determining the method of payment the Court shall consider the financial resources and future ability of the violator to pay. The court shall provide for payment of an amount equal to the pecuniary loss caused by the offense. Upon the application of an interested party, the Court shall schedule and hold an evidentiary hearing to determine the value of the victim's pecuniary loss resulting from the offense. A victim may not be compensated under this Section and under Sec. 943.245, Wis. Stats.
  - (2) In this Section, "pecuniary loss" means:
    - a. All special damages, but not general damages, substantiated by evidence in the record, which a person could recover against the violator in a civil action arising out of the facts or events constituting the violator's criminal activities, including, without limitation because of enumeration, the money equivalent of loss resulting from property taken, destroyed, broken or otherwise harmed and out-of-pocket losses, such as medical expenses; and

- b. Reasonable out-of-pocket expenses incurred by the victim resulting from the filing of charges or cooperating in the investigation and prosecution of the offense.

### **Sec. 11-3-8 Trespass to a Dwelling or Land.**

- (a) **Trespass to Land.** No person shall enter or remain on any land after having been notified by the owner or occupant not to remain on the premises.
- (b) **Trespass to Dwelling.** No person shall intentionally enter the dwelling of another without the consent of some person lawfully upon the premises, under circumstances tending to create or provoke a breach of the peace.

### **Sec. 11-3-9 Regulation of Smoking.**

- (a) **State Statute Adopted.** The provisions of Chapter 101.123, Wis. Stats., relating to the Regulation of Smoking and Clean Indoor Air, except provisions therein relating to penalties to be imposed, are hereby adopted by reference and made a part of this Section as is fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this Section. Any future amendment, revisions or modifications of the statutes incorporated herein are intended to be made a part of this Section.
- (b) **Smoking Prohibited Within or Upon All Buildings and Equipment Owned, Leased or Rented by the Village.** In recognition of a need to protect the health and comfort of the public and Village employees from the detrimental effects of smoking, pursuant to the authority granted to the Village by Sec. 101.123(2)(c), Wis. Stats., smoking as defined by Sec. 101.123(1)(h), Wis. Stats., is hereby prohibited by any person within or upon all buildings and enclosed equipment owned, leased or rented by the Village of Merrilan, except in designated areas.
- (c) **State Statutes Adopted.** The provisions contained in Sec. 120.12(20), Wis. Stats., regulating smoking on school premises are adopted by reference and made a part of this Section as though set forth in full.

### **Sec. 11-3-10 Theft Prohibited.**

- (a) **Acts.** Whoever does any of the following may be penalized as provided in Section 1-1-6 of this Code of Ordinances:
  - (1) Intentionally takes and carries away, uses, transfers, conceals or retains possession of movable property of another without his/her consent and with intent to deprive the owner permanently of possession of such property.

**11-3-10**

- (2) By virtue of his/her office, business or employment, or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of another, intentionally uses, transfers, conceals or retains possession of such money, security, instrument, paper or writing without the owner's consent, contrary to his/her authority, and with intent to convert to his/her own use or to the use of any other person except the owner. A refusal to deliver any money or a negotiable security, instrument, paper or other negotiable writing, which is in his/her possession or custody by virtue of his/her office, business or employment, or as trustee or bailee, upon demand of the person entitled to receive it, or as required by law, is prima facie evidence of an intent to convert to his/her own use within the meaning of this Subsection.
  - (3) Having a legal interest in movable property, intentionally and without consent, take such property out of the possession of the pledgee or such other person having a superior right of possession with intent thereby to deprive the pledgee or other person permanently of the possession of such property.
  - (4) Obtains title to property of another by intentionally deceiving him/her with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes a promise made with intent not to perform it if it is a part of a false and fraudulent scheme.
  - (5) Intentionally fails to return any personal property which is in his/her possession or under his/her control by virtue of a written lease or written rental agreement, within ten (10) days after the lease or rental agreement has expired.
- (b) **Definitions.** The following definitions shall be applicable in this Section:
- (1) **Property** means all forms of tangible property, whether real or personal, without limitation including electricity, gas and documents which represent or embody a choice in action or other intangible rights.
  - (2) **Movable Property** is property whose physical location can be changed, without limitation, including electricity and gas, documents which represent or embody intangible rights, and things growing on or affixed to or found in land.
  - (3) **Value** means the market value at the time of the theft or the cost to the victim of replacing the property within the reasonable time after the theft, whichever is less, if the property stolen is a document evidencing a choice in action or other intangible right; value means either the market value of the chose in action or other right or the intrinsic value of the document, whichever is greater. If the thief gave consideration for or had a legal interest in the stolen property, the amount of such consideration or value of such interest shall be deducted from the total value of the property.
  - (4) **Property of Another** includes property in which the actor is a co-owner and property of a partnership of which the actor is a member unless the actor and the victim are husband and wife.



## Sec. 11-3-11 Fraud on Residential Landlords Prohibited.

- (a) **Prohibited Acts.** Any person who, with intent to defraud, does any of the following shall be guilty of violating this Section:
- (1) Intentionally absconds without paying rent that has been contractually agreed upon in an oral or written lease 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 premise by the tenant, and the non-payment of said rent continues for a period of five (5) days after vacation of the premise; or
  - (2) Issues 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 five (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.
- (b) **Applicability.** This Section shall apply to rental agreements between residential landlords and tenants only. The words and terms used in this Section shall be defined and construed in conformity with the provisions of Chapter AG 134, Wis. Adm. Code, Chapter 704, Wis. Stats., and Sec. 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.
- (c) **Procedure.** An officer may issue a citation only when the complainant provides the following:
- (1) The name and current address of the tenant, a copy of the subject lease agreement, or sworn testimony of the terms of the subject oral lease.
  - (2) The amount of rent due, the date it was due, the date the tenant actually vacated the premise, and testimony that the rent remained unpaid for not less than five (5) days after vacating and that the tenant did not notify or attempt to notify the complainant of the tenant's new address, or that the tenant knowingly gave the complainant a false address.
  - (3) As to an unredeemable payment, the document used for attempting rent payment, the written demand for payment of the full amount plus bank charges, proof that the tenant received the written demand, and testimony that at least five (5) days have elapsed since the demand was received and no payment has been made.

**State Law Reference:** Chapter 704 and Sec. 990.001(1), Wis. Stats.; Ch. AG 134, Wis. Adm. Code.

## **Sec. 11-3-12 Graffiti.**

- (a) **Definition.** "Graffiti" is any drawing, figure, inscription, symbol, or other marking which is scratched, painted, drawn in pen or marker, or placed by some other permanent or semi-permanent means upon sidewalks, streets, public or private structures or any other place in public view without the express permission or consent of the property owner.
- (b) **Public Nuisance.** Graffiti is hereby declared to be a public nuisance, as defined under Title 11, Chapter 6 of this Code, affecting peace and safety.
- (c) **Prohibitions.** No person shall write, spray, scratch or otherwise affix graffiti upon any property whether private or public without the consent of the owner or owners of said property. Any person who shall affix graffiti to any property without the consent of the owner shall be liable for the costs of removing or covering such graffiti in addition to any fines imposed for violating this Section. The parents of any unemancipated minor child who affixed graffiti shall be held liable for the cost of removing or covering said graffiti in accordance with Sec. 895.035, Wis. Stats.
- (d) **Removal By Property Owner.**
  - (1) Every owner of a structure or property defaced by graffiti shall cover or remove the graffiti within fifteen (15) days in compliance with written notice served upon them by the Village of Merrilan to remove or cover such graffiti.
  - (2) In the event any owner fails to comply with the above-mentioned notice, the Village of Merrilan may have the graffiti covered or removed, and in such event, all costs, fees and expenses will be assessed to said owners real estate taxes pursuant to Sec. 66.60(16), Wis. Stats.

## **Sec. 11-3-13 Cemetery Regulations.**

- (a) **Purpose and Definition.** In order to protect cemetery areas within the Village from injury, damage or desecration, these regulations are enacted. The term "cemetery" as hereinafter used in this Section shall include all cemetery property, grounds, equipment and structures, both privately and publicly owned, which are located within the Village of Merrilan.
- (b) **Authority to Establish Rules and Regulations.** The cemetery property owner shall have the authority to establish reasonable rules and regulations to regulate and govern the operation of any cemetery in accordance with state law and this Code of Ordinances. The cemetery property owner shall reserve the right to prohibit and regulate the planting or placement of any flowers, plants, vines, shrubs, trees, flower pots, urns or other objects on cemetery property. Placements of any such plantings, containers or objects shall be in accordance with established regulations of the cemetery property owner.
- (c) **Specific Regulations.**
  - (1) **Disturbing Cemetery Property.** No person shall cut, remove, damage or carry away any flowers, plants, vines, shrubs or trees from any cemetery lot or property except

the owner of the cemetery lot or a person with the cemetery lot owner's consent or any cemetery employee or representative engaged in official cemetery duties for the cemetery owner; nor shall any person without proper authority remove, deface, mark or damage in any manner any cemetery markers, headstones, monuments, fences or structures; nor shall any person without proper authority remove, damage or destroy any vases, flower pots, urns or other objects which have been placed on any cemetery lot; nor shall any person move or remove any cemetery equipment without the owner's consent.

- (2) **Protection of Cemetery Property.** No person shall trap in any cemetery without specific written authorization of the owner; nor shall any person kill, injure or disturb or attempt to injure or disturb, any animals, birds or waterfowl, wild or domestic within any cemetery in any matter except as provided by this Code of Ordinances; nor shall any person climb any tree, break, cut down, trample upon, remove or in any manner injure, deface, write upon or in any manner damage any tree, shrub, flower, flower bed, turf, grassy area, soil, building, structure, equipment, official notice, sign or other property within any cemetery. No picnic, parties, or similar gatherings are permitted.
- (3) **Motor Vehicles.** Motor vehicles are restricted to the roads and drives and parking areas. Except for authorized maintenance vehicles, no person shall operate an unlicensed or licensed motorized vehicle on any cemetery property outside of areas specifically designated as parking areas or areas where the operation of such vehicles is specifically permitted. It shall be unlawful for a person to engage in any off-roadway operation of a motorized vehicle on cemetery property without the owner's consent.
- (4) **Speed Limit.** No person shall operate any motorized vehicle in any cemetery in excess of fifteen (15) miles per hour unless otherwise posted.
- (5) **Parking.** No person, without the owner's consent, shall park any motor vehicle in any cemetery on any grassy or seeded area or upon any location except a designated parking area; nor shall any person park a motor vehicle on cemetery property for any purpose except engaging in official cemetery business. Any unlawfully parked motor vehicle may be towed or removed by the cemetery property owner at the vehicle owner's expense.
- (6) **Littering Prohibited.** No person shall litter, dump or deposit any rubbish, refuse, earth or other material in any cemetery without the owner's consent.
- (7) **Pets.** Pets, including animals of any species, and horses are prohibited in any cemetery.
- (8) **Sound Devices.** No person shall operate or play any amplifying system or sound device in any cemetery without the owner's consent.
- (9) **Authorized Notices.** No person shall post, paste, fasten, paint or attach any placard, bill, notice, sign or advertising matter upon any structure, tree or other natural object in any cemetery, except cemetery regulations and other signs authorized by the owner.

**11-3-13**

No person shall remove, deface or damage in any manner any official sign or notice posted in any cemetery.

- (10) **Loitering Prohibited.** No person shall loiter or cause a nuisance or engage in any sport or exercise on any cemetery property without the owner's consent.
- (11) **Alcoholic Beverages Prohibited.** No person shall consume or have in his/her possession any open container containing an alcohol beverage upon any cemetery property within the Village unless the property is specifically named as being part of a licensed premises.
- (12) **Play Vehicles Prohibited.** No person shall operate or make use of a play vehicle upon any cemetery property without the owner's consent. As used in this Section, a play vehicle shall mean any coaster, skateboard, roller skates, sled, toboggan, unicycle or toy vehicle upon which a person may ride.
- (13) **Presence After Hours Prohibited.** No person shall be present upon any cemetery property without the owner's consent during posted hours when the cemetery is not open to the public.
- (14) **Firearms.** The use of a firearm in a Village cemetery is prohibited.