



To: Members of the Administration Committee

From: Chief Tim Styka

Date: August 26, 2013

RE: Anti-Bullying / Harassment

The issue of bullying is a complex social problem which is being addressed through education, policies and laws. Members of the Winnebago Crime Stoppers have been working primarily in the schools to implement programs to prevent bullying and provide a foundation of what behavior is not acceptable. They have also been working to solicit changes to local ordinances to provide for a consequence when a situation occurs.

Bullying is defined by the Menasha Joint Area School District as:

... deliberate or intentional behavior using word or actions, intended to cause fear, intimidation, or harm. Bullying may be a repeated behavior and involves an imbalance of power. Furthermore, it may be serious enough to negatively impact a student's educational, physical, or emotional well being. The behavior may be motivated by an actual or perceived distinguishing characteristic, such as, but not limited to: age; national origin; race; ethnicity; religion; gender; gender identity; sexual orientation; physical attributes; physical or mental ability or disability; and social, economic, or family status; however this type of bullying behavior need not be based on any of the legally protected characteristics. It includes, but is not necessarily limited to such behaviors as stalking, cyberbullying, intimidating, menacing, coercing, name-calling, taunting, making threats, and hazing.

Bullying does not just take place in school. Bullying can also take place between neighbors or co-workers. The actions which constitute bullying can take a variety of different forms. We currently have ordinances, such as Disorderly Conduct, which can address many of these behaviors.

However, many of the situations we deal with utilize telephones or electronic communications devices. Two State Statutes, 947.012 Unlawful Use of the Telephone and 947.0125 Unlawful Use of Computerized Communication Systems, specifically define and address these illegal actions. Copies of these Statutes have been attached for your review. Although State charges are an option, we believe it would be more appropriate for an ordinance charge for many of these violations instead of a criminal charge.

By adopting these two State Statutes the Common Council will provide the tools needed to address the issue of bullying. This also sends a message that Menasha is unified with the School District in addressing the issues with bullying.

CHAPTER 947

CRIMES AGAINST PUBLIC PEACE, ORDER AND OTHER INTERESTS

947.01	Disorderly conduct.	947.017	Threats to release chemical, biological, or radioactive substances.
947.011	Disrupting a funeral or memorial service.	947.02	Vagrancy.
947.012	Unlawful use of telephone.	947.04	Drinking in common carriers.
947.0125	Unlawful use of computerized communication systems.	947.06	Unlawful assemblies and their suppression.
947.013	Harassment.	947.07	Causing violence or breach of the peace by damaging or destroying a U.S. flag.
947.015	Bomb scares.		

Cross-reference: See definitions in s. 939.22.

947.01 Disorderly conduct. (1) Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

(2) Unless other facts and circumstances that indicate a criminal or malicious intent on the part of the person apply, a person is not in violation of, and may not be charged with a violation of, this section for loading, carrying, or going armed with a firearm, without regard to whether the firearm is loaded or is concealed or openly carried.

History: 1977 c. 173; 1979 c. 131; 2011 a. 35.

The defendant was properly convicted of disorderly conduct when he appeared on a stage wearing a minimum of clothing intending to and succeeding in causing a loud reaction in the audience. *State v. Maker*, 48 Wis. 2d 612, 180 N.W.2d 707 (1970).

An attorney was properly convicted under this section for refusing to leave a ward in a mental hospital until he had seen a client after having made statements in the presence of patients that caused some to become agitated. *State v. Eison*, 60 Wis. 2d 54, 208 N.W.2d 363 (1973).

It was not disorderly conduct for 4 people to enter an office with other members of the public for the purpose of protesting the draft and to refuse to leave on orders of the police when their conduct was not otherwise disturbing. *State v. Werstein*, 60 Wis. 2d 668, 211 N.W.2d 437 (1973).

This statute does not require a victim, but when the disorderly conduct is directed at a person, that person is the victim for the purpose of prosecuting the perpetrator for intimidating a victim under s. 940.44. *State v. Vinje*, 201 Wis. 2d 96, 548 N.W.2d 118 (Ct. App. 1996), 95–348.

A "true threat" is a statement that a speaker would reasonably foresee that a listener would reasonably interpret as a serious expression of a purpose to inflict harm, as distinguished from hyperbole, jest, innocuous talk, expressions of political views, or other similarly protected speech. It is not necessary that the speaker have the ability to carry out the threat. *State v. Perkins*, 2001 WI 46, 243 Wis. 2d 141, 626 N.W.2d 762, 94–1924.

Purely written speech, even written speech that fails to cause an actual disturbance, can constitute disorderly conduct, but the state has the burden to prove that the speech is constitutionally unprotected "abusive" conduct. "Abusive" conduct is conduct that is injurious, improper, hurtful, offensive, or reproachful. "True threats" clearly fall within the scope of this definition. *State v. Douglas D.*, 2001 WI 47, 243 Wis. 2d 204, 626 N.W.2d 725, 99–1767.

Application of the disorderly conduct statute to speech alone is permissible under appropriate circumstances. When speech is not an essential part of any exposition of ideas, when it is utterly devoid of social value, and when it can cause or provoke a disturbance, the disorderly conduct statute can be applicable. *State v. A.S.*, 2001 WI 48, 243 Wis. 2d 175, 626 N.W.2d 712, 99–2317.

Disorderly conduct does not necessarily require disruptions that implicate the public directly. This section encompasses conduct that tends to cause a disturbance or disruption that is personal or private in nature, as long as there exists the real possibility that the disturbance or disruption will spill over and disrupt the peace, order, or safety of the surrounding community as well. Sending repeated, unwelcome, and anonymous mailings was "otherwise disorderly conduct." *State v. Schwabke*, 2002 WI 55, 253 Wis. 2d 1, 644 N.W.2d 666, 99–3204.

Defiance of a police officer's order to move is itself disorderly conduct if the order is lawful. *Braun v. Baldwin*, 346 F.3d 761 (2003).

947.011 Disrupting a funeral or memorial service.

(1) In this section:

(a) "Facility" includes a cemetery in which a funeral or memorial service takes place.

(b) "Funeral or memorial service" includes a wake or a burial, as defined in s. 157.061 (1), but does not include a service that is not intended to honor or commemorate one or more specific decedents.

(2) (a) No person may do any of the following during a funeral or memorial service, during the 60 minutes immediately preced-

ing the scheduled starting time of a funeral or memorial service if a starting time has been scheduled, or during the 60 minutes immediately following a funeral or memorial service:

1. Engage in conduct that is prohibited under s. 947.01 (1) within 500 feet of any entrance to a facility being used for the service with the intent to disrupt the service.

2. Intentionally block access to a facility being used for the service.

(b) No person, with the intent to disrupt a funeral procession, may impede vehicles that he or she knows are part of the procession.

(c) No person may do any of the following during a funeral or memorial service, during the 60 minutes immediately preceding the scheduled starting time of a funeral or memorial service if a starting time has been scheduled, or during the 60 minutes immediately following a funeral or memorial service:

1. Engage in conduct that is prohibited under s. 947.01 (1) within 500 feet of any entrance to a facility being used for the service.

2. Block access to a facility being used for the service.

(d) No person may impede vehicles that are part of a funeral procession if the person's conduct violates s. 947.01 (1).

(3) (a) Except as provided in par. (b), any person who violates this section is guilty of a Class A misdemeanor.

(b) Any person who violates sub. (2) (a) or (b) after having been convicted of a violation of this section is guilty of a Class I felony.

History: 2005 a. 114; 2011 a. 35.

947.012 Unlawful use of telephone. (1) Whoever does any of the following is guilty of a Class B misdemeanor:

(a) With intent to frighten, intimidate, threaten, abuse or harass, makes a telephone call and threatens to inflict injury or physical harm to any person or the property of any person.

(b) With intent to frighten, intimidate, threaten or abuse, telephones another and uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(c) Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to abuse or threaten any person at the called number.

(2) Whoever does any of the following is subject to a Class B forfeiture:

(a) With intent to harass or offend, telephones another and uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(b) Makes or causes the telephone of another repeatedly to ring, with intent to harass any person at the called number.

(c) Makes repeated telephone calls, whether or not conversation ensues, with intent solely to harass any person at the called number.

(d) Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number.

(e) Knowingly permits any telephone under his or her control to be used for any purpose prohibited by this section.

History: 1979 c. 131; 1991 a. 39.

947.0125 Unlawful use of computerized communication systems. (1) In this section, "message" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature, or any transfer of a computer program, as defined in s. 943.70 (1) (c).

(2) Whoever does any of the following is guilty of a Class B misdemeanor:

(a) With intent to frighten, intimidate, threaten, abuse or harass another person, sends a message to the person on an electronic mail or other computerized communication system and in that message threatens to inflict injury or physical harm to any person or the property of any person.

(b) With intent to frighten, intimidate, threaten, abuse or harass another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message threatens to inflict injury or physical harm to any person or the property of any person.

(c) With intent to frighten, intimidate, threaten or abuse another person, sends a message to the person on an electronic mail or other computerized communication system and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(d) With intent to frighten, intimidate, threaten or abuse another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(e) With intent to frighten, intimidate, threaten or abuse another person, sends a message to the person on an electronic mail or other computerized communication system while intentionally preventing or attempting to prevent the disclosure of his or her own identity.

(f) While intentionally preventing or attempting to prevent the disclosure of his or her identity and with intent to frighten, intimidate, threaten or abuse another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message.

(3) Whoever does any of the following is subject to a Class B forfeiture:

(a) With intent to harass, annoy or offend another person, sends a message to the person on an electronic mail or other computerized communication system and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(b) With intent to harass, annoy or offend another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(c) With intent solely to harass another person, sends repeated messages to the person on an electronic mail or other computerized communication system.

(d) With intent solely to harass another person, sends repeated messages on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the messages.

(e) With intent to harass or annoy another person, sends a message to the person on an electronic mail or other computerized communication system while intentionally preventing or attempting to prevent the disclosure of his or her own identity.

(f) While intentionally preventing or attempting to prevent the disclosure of his or her identity and with intent to harass or annoy another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message.

(g) Knowingly permits or directs another person to send a message prohibited by this section from any computer terminal or other device that is used to send messages on an electronic mail or other computerized communication system and that is under his or her control.

History: 1995 a. 353.

947.013 Harassment. (1) In this section:

(a) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

(b) "Credible threat" means a threat made with the intent and apparent ability to carry out the threat.

(c) "Personally identifiable information" has the meaning given in s. 19.62 (5).

(d) "Record" has the meaning given in s. 19.32 (2).

(1m) Whoever, with intent to harass or intimidate another person, does any of the following is subject to a Class B forfeiture:

(a) Strikes, shoves, kicks or otherwise subjects the person to physical contact or attempts or threatens to do the same.

(b) Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose.

(1r) Whoever violates sub. (1m) under all of the following circumstances is guilty of a Class A misdemeanor:

(a) The act is accompanied by a credible threat that places the victim in reasonable fear of death or great bodily harm.

(b) The act occurs while the actor is subject to an order or injunction under s. 813.12, 813.122 or 813.125 that prohibits or limits his or her contact with the victim.

(1t) Whoever violates sub. (1r) is guilty of a Class I felony if the person has a prior conviction under this subsection or sub. (1r), (1v), or (1x) or s. 940.32 (2), (2e), (2m), or (3) involving the same victim and the present violation occurs within 7 years of the prior conviction.

(1v) Whoever violates sub. (1r) is guilty of a Class H felony if he or she intentionally gains access to a record in electronic format that contains personally identifiable information regarding the victim in order to facilitate the violation under sub. (1r).

(1x) Whoever violates sub. (1r) under all of the following circumstances is guilty of a Class H felony:

(a) The person has a prior conviction under sub. (1r), (1t) or (1v) or this subsection or s. 940.32 (2), (2e), (2m), or (3).

(b) The person intentionally gains access to a record in order to facilitate the current violation under sub. (1r).

(2) This section does not prohibit any person from participating in lawful conduct in labor disputes under s. 103.55.

History: 1985 a. 336; 1991 a. 194; 1995 a. 496; 2001 a. 109.

This section is not a safety statute and does not grant a private right of action for its violation. In re Estate of Drab, 143 Wis. 2d 568, 422 N.W.2d 144 (Ct. App. 1988).

947.015 Bomb scares. Whoever intentionally conveys or causes to be conveyed any threat or false information, knowing such to be false, concerning an attempt or alleged attempt being made or to be made to destroy any property by the means of explosives is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

This section is not an included crime in s. 941.36, recklessly endangering safety. State v. Van Arck, 62 Wis. 2d 155, 215 N.W.2d 41 (1974).

Read with the requirement that only "true threats" can be prosecuted, this section does not violate the guarantee of free speech. State v. Robert T. 2008 WI App 22, 307 Wis. 2d 482, 746 N.W.2d 564, 96-2206.

947.017 Threats to release chemical, biological, or radioactive substances. (1) In this section:

ORDINANCE O - 4 -13

AN ORDINANCE AMENDING SECTION 11-1-1 OF THE CODE OF ORDINANCES
(Unlawful Use of Telephone and Computer)

INTRODUCED BY MAYOR MERKES AND ALDERMAN KEEHAN

The Common Council of the City of Menasha does hereby ordain as follows:

SECTION 1: Amend Title 11, Chapter 1, SEC.11-1-1 of the Code of Ordinances
of the City of Menasha, Wisconsin as follows:

CHAPTER 1

State Statutes Adopted

SEC. 11-1-1 OFFENSES AGAINST STATE LAWS SUBJECT TO FORFEITURE.

The following statutes defining offenses against the peace and good order of the State are adopted by reference to define offenses against the peace and good order of the City provided the penalty for commission of such offenses hereunder shall be limited to a forfeiture imposed under the general penalty provisions of this Code of Ordinances. Any future amendments, revisions or modifications of the Statutes incorporated herein by reference are intended to be made part of this Code.

...

- 947.012 Unlawful use of telephone
- 947.0125 Unlawful use of computerized communication systems

...

SECTION 2: This amending Ordinance shall take effect upon passage and publication as provided by law.

Passed and approved this day of , 2013.

Donald Merkes, Mayor

ATTEST: _____
Deborah A. Galeazzi, City Clerk