

CHAPTER 9

PUBLIC NUISANCES

- 9.01 Public Nuisances Prohibited
- 9.02 Definitions
- 9.03 Abatement of Public Nuisances
- 9.04 Cost of Abatement
- 9.05 Penalties
- 9.06 Property Maintenance Standards
- 9.07 Residency Restrictions and Prohibited Conduct for Sex Offenders

9.01 – PUBLIC NUISANCES PROHIBITED

No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the Village of Cassville.

9.02 – DEFINITIONS

- (1) **Public Nuisance.** A public nuisance is a thing, act, occupation, condition or use of property, whether or not otherwise lawful, which shall continue for such length of time as to:
- (a) Substantially annoy, interfere, injure or endanger the comfort, health, repose or safety of the public;
 - (b) In any way render the public insecure in life or in the use of property;
 - (c) Greatly offend the public morals or decency;
 - (d) Unlawfully and substantially interfere with, obstruct, or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property.
- (2) **Public Nuisances Affecting Health.** The following acts, omissions, places, conditions and things are hereby specifically declared to be public health nuisances, but such enumerations shall not be construed to exclude other health nuisances coming within the definition of Subsection (1) of this section:
- (a) All decayed, harmfully adulterated, or unwholesome food or drink sold or offered for sale to the public.
 - (b) Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within 24 hours after death.

- (c) Accumulations of decayed animal or vegetable matter, animal waste, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material whatsoever in which flies, mosquitoes, disease-carrying insects, mice, rats or other vermin may breed.
- (d) All stagnant water in which mosquitoes, flies or other insects can multiply.
- (e) Privy vaults and garbage cans which are not fly-tight.
- (f) All noxious weeds and other rank growth of vegetation.
- (g) All animals running at large.
- (h) Animal feces or excretions allowed to remain on public property or property of another person.
- (i) The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the Village limits or within one mile therefrom in such quantities as to endanger the health of person of ordinary sensibilities or to threaten or cause substantial injury to property in the Village.
- (j) The pollution of any water table, public well or cistern, stream, lake, canal, river, or other body of water by sewage, creamery or industrial wastes or other substances.
- (k) Any use of property, substances or things within the Village of Cassville emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, gasses, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the Village.
- (l) All abandoned wells, open and unguarded pits, excavations or other dangerous openings not securely covered or secured from public use.
- (m) Any use of property, which shall cause any nauseous or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the Village.
- (n) The open storage upon the surface of any land of junk, garbage, hewn or fallen trees, waste building materials from land development or building construction or repair, litter, rubbish and refuse, inoperable household appliances, irreparable household furniture, inoperable motor vehicles (including but not limited to cars, trucks, motorcycles, tractors, trailers, UTVs and ATVs, snowmobiles, lawn mowers, RVs and campers, boats and all other personal and recreational vehicles), inoperable motor vehicle parts, cloth, rags, clothing, paper, bottles, rubber, metals, alloys or any other article or thing which from its worn or broken condition renders it practically useless for the purpose for which it was made.

(3) Public Nuisances Offending Morals and Decency. The following acts, omissions, places, conditions and things are hereby specifically declared to be public nuisances offending public morals, and decency, but such enumerations shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of Subsection (1) of this section.

- (a) All building or structures kept or restored for the purpose of prostitution, or gambling unless such gambling is expressly authorized or permitted by the laws of the State of Wisconsin.
- (b) All gambling devices and slot machines, unless expressly authorized or permitted by the laws of the State of Wisconsin.
- (c) All places where intoxicating liquor or fermented malt beverages are sold, brewed, bottled, manufactured, or rectified in violation of the ordinances of the Village of Cassville and/or Wisconsin Statutes.
- (d) Any place or premises within the Village of Cassville where Village ordinances or State Laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.
- (e) Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of the laws of the State of Wisconsin or ordinances of the Village.

(4) Public Nuisances Affecting Peace and Safety. The following acts, omissions, places, conditions and things are hereby declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the provisions of Subsection (1) of this section:

- (a) All signs and billboards, awnings and other similar structures over and/or near streets, sidewalks, public grounds or places frequented by the public, so constructed, situated or construed as to endanger the public safety.
- (b) All buildings erected, repaired or altered within the Village limits of the Village of Cassville in violation of the provisions of the ordinances of the Village, relating to materials and manner of construction of buildings and structures.
- (c) All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing which purpose to be or may be mistaken as an official traffic control device, railroad sign or signal or which because of its color, location, brilliance or manner of operation interferes with the effectiveness of any such device, sign or signal, or which interferes with the lawful use of public highways.

- (d) All trees, hedges, billboards or other obstructions which may prevent persons driving vehicles on public streets alleys or highways from obtaining a clear view of traffic when approaching on intersection or pedestrian crosswalk.
- (e) All limbs or trees which project over and are less than 14 feet above the surface of a public sidewalk or street or less than 10 feet above any other public place.
- (f) All use or display of fireworks except as provided by the laws of the State of Wisconsin and ordinances of the Village.
- (g) All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.
- (h) All wires over streets, alleys or public grounds, which are strung less than 15 feet above the surface thereof.
- (i) All loud, discordant and unnecessary noises or vibrations of any kind.
- (j) The keeping or harboring of any animal or fowl which by frequent or habitual howling, yelping, barking, crowing, or making of other noises shall greatly annoy or disturb a neighborhood or persons within the Village.
- (k) All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the ordinances of the Village or which, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished.
- (l) All open and unguarded pits, wells, cisterns, cesspools, excavations, unused basements, or other dangerous openings freely accessible from any public street, alley or sidewalk.
- (m) All abandoned, unattended or discarded refrigerators, freezers, iceboxes or airtight containers from which the doors and other covers have not been removed or which are not equipped with a device for opening from the inside.
- (n) Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which cause large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.
- (o) **SOLID FUEL HEATING DEVICES**

1. Definitions. The following definitions shall be applicable herein:

- a. Solid Fuel-Fired Heating Device. A device or structure not located or completely contained within the principal structure, designed for solid fuel combustion and for the purpose of providing indoor heat including, but not limited to, combination fuel furnaces or boilers which burn solid fuel.

- b. Public Nuisance. All solid fuel-fired heating devices constructed or installed after the effective date of this ordinance, including replacements of solid fuel heating devices constructed prior to that date, shall be considered a public nuisance within the Village and are banned.

- (p) Repeated or continuous violations of the ordinances of the Village or laws of the State of Wisconsin relating to the storage of flammable liquids.

- (q) All snow and ice not removed or sprinkled with ashes, sawdust or sand as provide in S. 6.07 of this code.

- (r) Junked Vehicles, Trailers, Appliances, Furniture, Etc.
 - 1. Storage of vehicles, trailers, appliances, and furniture restricted.
 - a. No disassembled, inoperable, broken, unlicensed, junked or wrecked motor vehicles, boats, recreational vehicles, campers, truck bodies, tractors, trailers, appliances, or furniture shall be stored or allowed to remain in the open upon public or private property within the Village for a period exceeding 5 days if upon public property, or for a period exceeding 30 days if upon private property.

 - b. Any business engaged in automotive sales or repair may retain such vehicles in the open or on private property for a period not to exceed 1 year, after which such vehicles must be enclosed and kept out of view of the public.

 - 2. Definitions.
 - a. The term “Motor Vehicles” as used in this section is defined as follows: Any motor vehicle typically operated on public or private roadways, trails or waterways, including but not limited to automobiles, trucks, motorcycles, boats, recreational vehicles, campers, all-terrain vehicles, utility-terrain vehicles, snowmobiles, lawn mowers, golf carts, personal electric vehicles, truck bodies, tractors or trailers. The term “motor vehicle” is further defined in section 340.01(35), Wisconsin Statutes.

 - b. The term “disassembled, inoperable, junked or wrecked motor vehicles, boats, recreational vehicles, campers, truck bodies, tractors, trailers” as used in this section is defined as follows: Motor vehicles, boats, recreational vehicles, campers, truck bodies, tractors, trailers in such state of physical or mechanical ruin as to be incapable of propulsion or being operated upon the public streets, highways, trails or waterways.

 - c. The term “unlicensed – motor vehicles, boats, recreational vehicles, campers, truck bodies, tractors or trailers” as used in this code is defined as follows:

Motor vehicles, boats, recreational vehicles, campers, truck bodies, tractors or trailers which do not bear lawful current license plates.

- d. The term “appliance” is defined as, but not limited to, any stove, washer, dryer, refrigerator, freezer, hot water heater, microwave, computer, or other equipment which is no longer operable in the sense for which it was manufactured.
- e. The term “furniture” is defined as, but not limited to, any sofa, chair, table, bed, shelves, lights or other fixtures, or any other household equipment which is broken, irreparable or otherwise no longer operable in the sense for which it was manufactured.

9.03 – ABATEMENT OF PUBLIC NUISANCES

- (1) **Enforcement.** The Chief of Police, the Chief of the Fire Department and the Village President shall enforce those provisions of this chapter that come within the jurisdiction of their offices, and they shall make periodic inspections and inspections upon complaints to ensure that such provisions are not violated. No action shall be taken under this section to abate a public nuisance unless the officer shall have inspected or caused to be inspected the premises where the nuisance is alleged to exist and the inspecting official is satisfied that a nuisance does in fact exist.
- (2) **Summary Abatement.** If the inspecting officer shall determine that a public nuisance exists within the Village of Cassville and that there is a great and immediate danger to the public health, safety, peace, morals or decency, the Village President may direct the proper officer to cause the same to be abated and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.
- (3) **Abatement After Notice.** If the inspecting officer shall determine that a public nuisance exists on private premises but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals or decency, he shall serve notice on the person causing or maintaining the nuisance to remove the same within 10 days. The person served notice has the right to file an injunction with Grant County Circuit Court within said 10 days restraining the Village and the inspecting officer from entering the premises and abating or removing the nuisance. After said 10 days has elapsed, if injunction is not filed and/or nuisance is not removed, the proper officer shall cause the nuisances to be removed as provided in subparagraph 2.
- (4) **Other Methods Not Excluded.** Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the Village of Cassville or its officials in accordance with the laws of the state of Wisconsin.
- (5) **Court Order.** Except when necessary under subparagraph 2, no officer hereunder shall use force to obtain access to private property to abate a public nuisance, but shall request permission to enter upon private property if such premises are occupied, and, if such

permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.

9.04 – COST OF ABATEMENT

In addition to any other penalty imposed by this ordinance for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Village shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance, and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

9.05 – PENALTY

Any person who shall violate any provision of this chapter shall be subject to a penalty as provided in Section 25.04 of this code. A separate offense shall be deemed committed on each day on which a violation of any provision of this chapter occurs or continues.

9.06 – PROPERTY MAINTENANCE STANDARDS

(1) Findings and Declaration of Policy. It is hereby found and declared:

- (a) That there exist in the Village of Cassville, premises used for residential and nonresidential purposes which are, or may become in the future, substandard with respect to structure, equipment or maintenance;
- (b) That such condition, including, but not limited to, structural deterioration, lack of maintenance and appearance of the exterior of the premises and appurtenant lawns, infestation and existence of fire hazards, constitute a threat to the health, safety, general welfare and reasonable comfort of the citizens of the Village;
- (c) That by reason of lack of maintenance and because of progressive deterioration, certain properties have the further effect of creating blighting conditions and that if these conditions are not curtailed and removed, they will grow and spread and will necessitate the expenditure of large amounts of public funds to correct and eliminate;
- (d) That as the result of the regulations and restrictions contained in this ordinance, the desirability and amenities of residential and nonresidential uses may be enhanced and the public health, safety and general welfare be protected and fostered.

(2) Purpose. The purpose of this ordinance is to protect the public health, safety and general welfare by establishing minimum standards governing the maintenance, appearance and condition of residential and nonresidential premises; to fix certain responsibilities and duties upon owners and operators and occupants; to authorize and establish procedures for the inspection of residential and nonresidential premises; and to provide for the repair, demolition or vacation of premises unfit for human habitation, occupancy or use.

(3) **Definitions.** The following words and terms, wherever use in this ordinance, shall be defined as follows unless a different meaning clearly appears from the context.

- (a) *Deterioration.* The condition of a building or part thereof characterized by holes, breaks, rot, crumbling, peeling, rusting or other evidence of physical decay or neglect, lack of maintenance or excessive use.
- (b) *Exposed to Public View.* Any premises or building or part thereof that may be viewed by the public.
- (c) *Exterior of the Premises.* The open space on the premises and the exterior of any structure thereon.
- (d) *Extermination.* The control and elimination of insects, rodents, vermin or other pests.
- (e) *Infestation.* The presence of insects, rodents, vermin or other pests on the premises that constitute a health hazard.
- (f) *Lawn.* Land covered with cool season grasses maintained at a low height.
- (g) *Noxious Weeds.* Canada Thistle, Leafy Spurge, Field Bindweed (Creeping Jenny), Purple Loosestrife, Multiflora Rose, Burdock, Common Ragweed, Great Ragweed, Garlic Mustard, Goat's Beard, Poison Ivy, Wild Parsnip, Cocklebur, Pigweed, Common Lambsquarter, Curled Dock, Hemp, English Plantain.
- (h) *Premises.* A lot or parcel of land including the buildings and structures thereon and its appurtenant lawn, if any.
- (i) *Property Owner.* Any person who, alone or jointly or severally with others, shall have legal or equitable title to any premises, with or without accompanying actual possession thereof.
- (j) *Public Nuisance.* A public nuisance is a thing, act, condition or use of property which shall continue for such length of time as to:
 - 1. Substantially annoy, interfere, injure or endanger the comfort, health, safety and general welfare of the public, or
 - 2. In any way render the public insecure in life or the use of property, or
 - 3. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage, any street, alley or public way or the use of public property.
- (k) *Waste.* Waste shall include but not be limited to garbage, litter, refuse, trash, rubbish, junk or debris.

(4) **Applicability.** Every residential, nonresidential or mixed occupancy building and the land on which it is located, used or intended to be used for residential, commercial, agricultural or industrial occupancy shall comply with the provisions of this ordinance whether or not such building or premises shall have been constructed, altered, repaired, installed or planted before or after the effective date of this ordinance.

(5) **Regulation of Premises.**

(a) **Maintenance of Exterior of Premises.** The exterior of the premises and all structures thereon shall be kept free of unsanitary conditions and any hazards to the safety of the occupant, invitees, pedestrians, and other persons utilizing or coming on the premises. The exterior of every structure on a premises, including fences or enclosures, shall be maintained in good repair, free of broken glass, loose shingles, crumbling stone or brick, excessively peeling paint, loose boards or other conditions indicative of deterioration or inadequate maintenance all to the end that the property itself may be preserved, safety and fire hazards eliminated and adjoining properties protected from blight. Any of the foregoing conditions are found to be public nuisances and shall be promptly removed and abated by the property owner. Such public nuisances include, but are not limited to, the following:

1. Waste
2. Dead and dying trees and limbs or other natural growth which by reason of rotting, deteriorating conditions or storm damage constitute a hazard to persons in the vicinity.
3. Sources of infestations
4. Lack of maintenance to the exterior of the premises such that the appearance of the premises or structures of waste or other property thereon contributes to blight.

(b) **Nuisances Prohibited.** No person, firm, corporation, company, or organization shall permit any public nuisance as defined herein to remain on any premises owned, controlled or occupied by such person, firm, corporation, company or organization within the Village.

(c) **Inspection.** The Village President may cause to be inspected by the Village Building Inspector any premise and place within the Village to determine whether any public nuisance as herein exists.

(d) **Abatement of Nuisance.** If the Village Building Inspector shall determine with reasonable certainty that any public nuisance as defined herein exists, such inspection shall be immediately reported to the Village Board which shall, if it determines that such nuisance exists, cause notice to be delivered personally or by certified mail, return receipt requested, on the property owner that the Village Board proposes to order the abatement of the public nuisance.

- (e) Hearing. If the property owner believes that no public nuisance exists, such person may request a hearing before the Village Board. The request for said hearing must be made in writing to the Village Clerk's office within ten (10) days of the date of delivery of the notice from the Village. When a hearing is requested by the property owner, a hearing by the Village Board shall be held not less than five (5) days from the date of the owner's request. At the hearing, the owner may appear in person or by his attorney, any present witnesses and may cross-examine witnesses presented by the Village. At the close of the hearing, the Village Board shall make its decision in writing. If the Village Board determines that a public nuisance does exist, the Village Board shall order the nuisance abated. The order shall specify the time by which the nuisance shall be abated which shall not be less than forty-eight (48) hours from delivery of said order either personally or by certified mail, return receipt requested.
- (f) Penalty. Any person who does not abate a public nuisance under this section 12.03(5) within the time specified shall, in addition to all other remedies available to the Village, including payment of the cost of inspection, be subject to a forfeiture of not less than \$10.00 nor more than \$400.00. Each day said failure to abate the nuisance shall constitute a separate offense.

9.07 – RESIDENCY RESTRICTIONS AND PROHIBITED CONDUCT FOR SEX OFFENDERS.

(1) Findings

- (a) The Village Board of the Village of Cassville, Grant County, Wisconsin, do hereby find as follows, and adopt such findings as their legislative history for the provisions hereinafter enacted.
- (b) The Wisconsin Statutes provide for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community.
- (c) Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons, a more dangerous type of sex offender, and specifically, in Section 980.08, Stats., following such commitment, under certain conditions, provides for the supervised release of such persons into the community.
- (d) The Village of Cassville places a high priority on maintaining public safety through highly skilled and trained law enforcement as well as dependency upon laws that deter and punish criminal behavior.
- (e) Sex offenders have very high recidivism rates, and according to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to re-offend and prey on the most innocent members of our society. In addition, more than two-thirds of the victims of rape and sexual assault are under the age of eighteen, and

sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon.

- (f) The Village Board has been advised by counsel of the findings of a number of the municipal governing bodies within the state of Wisconsin as they pertain to laws adopted which relate to and in part impose restrictions upon sex offenders with respect to residency; and
- (g) The Village Board having also been advised of the decision of the United States Court of Appeals for the 8th Circuit, in *Doe v. Miller*, 405 F.3d 700, 716 (8th Cir. 2005), providing in part: "The record does not support a conclusion that the Iowa General Assembly and the Governor acted based merely on negative attitudes toward, fear of, or a bare desire to harm a politically unpopular group. [Citation omitted]. Sex offenders have a high rate of recidivism, and the parties presented expert testimony that reducing opportunity and temptation is important to minimizing the risk of re-offense. Even experts in the field could not predict with confidence whether a particular sex offender will re-offend, whether an offender convicted of an offense against a teenager will be among those who "cross over" to offend against a younger child, or the degree to which regular proximity to a place where children are located enhances the risk of re-offense against children. One expert in the district court opined that it is just "common sense" that limiting the frequency of contact between sex offenders and areas where children are located is likely to reduce the risk of an offense. [Citation omitted]. The policymakers of Iowa are entitled to employ such "common sense," and we are not persuaded that the means selected to pursue the States legitimate interest are without rational basis."
- (h) The Village Board has reviewed a study done by the California Research Bureau entitled "The Impact of Residency Restrictions on Sex Offenders and Correctional Management Practices: A Literature Review" which details the pros and cons of adopting certain types of residing restrictions. The board members have also conducted their own independent research on the issue.
- (i) The Village Board recognizes that, through 2005 Wisconsin Acts 431 and 434, the Wisconsin Legislature has both created and repealed statutory provisions relating to the placement of sexually violent persons as set forth by the Wisconsin Revisor of Statutes in a letter dated September 25, 2006, thereby leaving the location of sex offender residency unregulated.
- (j) The Village Board having considered a proposed amendment to the municipal code to provide residency restrictions for sex offenders and to prevent certain conduct by such persons to further protect children, and upon all of the records and files and reports and proceedings pertaining to the subject matter, and all of the prior actions and experience of the Village of Cassville in protecting the community from sexually violent persons, finds the proposed amendments will serve to protect the health, safety and welfare of the community.

(2) **Purpose.** This chapter is a regulatory measure aimed at protecting the health and safety of children in Cassville from the risk that convicted sex offenders may re-offend in locations close to their residences. The city finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. Given the high rate of recidivism for sex offenders, and that reducing opportunity and temptation is important to minimizing the risk of re-offense, there is a need to protect children where they congregate or play in public places in addition to the protections afforded by state law near schools, daycare centers and other places children frequent. The city finds and declares that in addition to schools and daycare centers, children congregate or play at public parks.

(3) **Definitions.** As used in this chapter and unless the context otherwise requires:

(a) "Designated offender" means:

1. Any person who is required to register under Wis. Stat. Section 301.45 for any sexual offense against a child, or
2. Any person who is required to register under Wis. Stat. Section 301.45 and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to Wis. Stat. Section 301.46(2) and (2m).

(b) "Residence" ("reside") means the place where a person sleeps, or which qualifies as a residence under the holdings of the Wisconsin Supreme Court, and which may include more than one location, and may be mobile or transitory.

(4) **Residency restrictions**

(a) In the absence of a court order specifically exempting a designated offender from the residency restriction contained in this section, a designated offender shall not reside within five hundred feet of the real property comprising any of the following:

1. Any facility for children (which means a public or private school, a group home, as defined in Section 48.02(7), Stats., a residential care center for children and youth, as defined in Section 48.02(15d), Stats., a shelter care facility, as defined in Section 48.02(17), Stats., a foster home, as defined in Section 48.02(6), Stats., a treatment foster home, as defined in Section 48.02(17q), Stats., a day care center licensed under Section 48.65, Stats., a day care program established under Section 120,13(14), Stats., a day care provider certified under Section 48.651, Stats., or a youth center, as defined in Section 961.01(22), Stats.); and/or
2. Any facility used for:
 - a. A public park, parkway, parkland, park facility;
 - b. A public swimming pool;
 - c. A public library;

- d. A recreational trail;
- e. A public playground;
- f. A school for children;
- g. Athletic fields used by children;
- h. A movie theatre;
- i. A licensed daycare center;
- j. Any specialized school for children, including, but not limited to a gymnastics academy, dance academy or music school;
- k. A public or private golf course or range; and
- l. Aquatic facilities open to the public;

The distance shall be measured from the closest boundary line of the real property supporting the residence of a designated offender to the closest real property boundary line of the applicable above enumerated use(s).

(b) In addition to and notwithstanding the foregoing, but subject to Section 9.07(E), below, no designated offender shall be permitted to reside in the Village of Cassville, unless such person was domiciled in the Village of Cassville at the time of the offense resulting in the person's most recent conviction for committing the sexually violent offense and/or crime against children.

(c) No person shall knowingly sell or rent a residential property to a designated offender if the property is located in such a manner that the designated offender, by residing at the property, will be in violation of subsection A, above.

(5) Residency Restriction Exceptions. A designated offender residing within five hundred feet of the real property comprising any of the uses enumerated in Section 9.07(D) above, does not commit a violation of this chapter if any of the following apply:

(a) The designated offender is required to serve a sentence or is otherwise involuntarily required to reside in a jail, prison, juvenile facility, or other correctional institution or mental health facility.

(b) The designated offender has established a residence prior to the effective date of the ordinance codified in this chapter which is within five hundred feet of any of the uses enumerated in 9.07(D) above, or such use is newly established after such effective date and it is located within such five hundred feet of a residence of a designated offender which was established prior to the effective date of the ordinance codified in this chapter, or such use is newly-established after the effective date of a determination provided by the Cassville police department pursuant to Section 9.07(0) below.

(c) The designated offender is a minor or ward under guardianship.

(6) Prohibited Conduct. No designated offender shall enter or be present upon any real property that supports or upon which there exists any facility used for or that supports a public park, swimming pool, library, recreational trail, playground, school, athletic field or

daycare center when children are present unless the designated offender's natural or adopted child attends or is using said facility and only when the designated offender's entrance and presence by the offender upon the property occurs during those hours of activity in which the child of the designated offender is participating in the use allowed upon said property.

(7) Appeal

- (a) Any person who believes that they may (or may not) be subject to the provisions of this chapter may request a determination from the Cassville police department regarding whether the individual is within the definition of a "designated offender" pursuant to Section 9.07(C), above, or whether a particular residence is within an area prohibited pursuant to Section 9.07(D), above.
- (b) In order to obtain such a determination, the individual must present in writing, under oath, a statement describing all relevant facts which might apply to such determination.
- (c) If additional facts are discovered at any time subsequent to issuance of such a determination, which facts would change the outcome of the determination, the Cassville police department may rescind, withdraw or modify the determination based upon such additional facts.

(8) Penalty

- (a) If a designated offender violates any provision of this chapter, such designated offender shall be subject to a forfeiture of not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500).
- (b) Each day a violation continues shall constitute a separate offense.
- (c) In addition to the penalty provided above, if a designated offender violates any provision of this chapter, by establishing a residence or occupying residential premises within five hundred (500) feet of those premises as described therein, without any exception(s) as also set forth above, the city attorney, upon referral from the chief of police and the written determination by the chief of police that upon all of the facts and circumstances and the purpose of this chapter, such residence occupancy presents an activity or use of property that interferes substantially with the comfortable enjoyment of life, health, safety of another or others, may bring an action in the name of the city in the Circuit Court for Grant County to permanently enjoin such residency as a public nuisance.