ORDINANCE NO.: A—2020-21

TO THE HONORABLE, THE OUTAGAMIE COUNTY BOARD OF SUPERVISORS

LADIES AND GENTLEMEN:  

The Outagamie County Sheriff’s Office responds to all calls for service within the territorial jurisdiction of Outagamie County which includes calls for service requesting of all county ordinances. The calls for service include complaints regarding loud noise, animals at large, underage tobacco consumption and electronic harassment.

In 2019, the Sheriff’s Office responded to calls for service involving the above issues consisting of the following:

- 850 calls regarding disturbances, 175 of which were noise complaints.
- Approximately 700 calls for service regarding animals, 50% of which were related to domestic animals at large with many of those calls regarding the same residence and likely the same animal running at large.
- Approximately 20 calls regarding harassing communications via text message including messages with sexual content, also known as “sexting”.

Deputies throughout the county are asked to enforce underage smoking/vaping laws on a regular basis. While Outagamie County Ordinances adopted Wis. Stat. 120.123, they do not specifically adopt Wis. Stat. 254.92 which precludes minors from possessing tobacco. In addition, previous law allowed individuals age 18 and older to purchase and consume tobacco products. On December 20, 2019 President Trump signed legislation to amend the Federal Food, Drug, and Cosmetic Act, which raised the federal minimum age for the sale and possession of tobacco products from age 18 to age 21. It is now illegal for a retailer to sell any tobacco products, including cigarettes, cigars and e-cigarettes to anyone under age 21.

Not all municipalities within Outagamie County have ordinances addressing the issues set forth above. Moreover, some of the municipalities who have such ordinances do not have a municipal law enforcement agency to enforce said ordinances which requires Sheriff Deputies to respond to complaints with no recourse for enforcement. Absent a suspect taking further action to violate a state criminal statute, or other county ordinance, the Sheriff’s Office is left without an appropriate enforcement option or mechanism to require compliance.

There is not anticipated to be any material budget impact for these proposed changes.

NOW THEREFORE, the following ordinance is presented to the County Board.

BE IT ORDAINED, that the Outagamie County Board of Supervisors does amend Section 34-14 of the Outagamie County Code of Ordinances to read as follows (additions are in bold, italics and underlined; deletions are struck through):
Sec. 34-14. – Smoking Policy

1) Smoking is prohibited in the county as provided in Wis. Stats. §101.123.

2) In addition to the provisions of Wis. Stats. §101.123 it is prohibited for any individual under the age of 21 to use or possess tobacco products or any item which possesses nicotine including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco or electronic vapor cigarettes.

BE IT FURTHER ORDAINED, that the Outagamie County Board of Supervisors does create Section 8-2 of the Outagamie County Code of Ordinances to read as follows:

8-2. – Animals at Large

(a) Except as otherwise provided in paragraph (b), no person shall own, keep or harbor a dog or other animal, and intentionally or negligently permit such dog or other animal to run at large. Under the provisions of this section, the dog or animal shall be considered as running at large if it is not on the property of the owner or some other person who has assumed responsibility for the animal.

(b) A dog that is actively engaged in a legal hunting activity, including training, is not considered to be running at large if the dog is monitored or supervised by a person and the dog is on land that is open to hunting or on land on which the person has obtained permission to hunt or to train a dog.

2) ANIMAL RUNNING AT LARGE SUBJECT TO IMPOUNDMENT. Any animal which is running at large may be captured by a law enforcement officer or their designee. Whether or not to capture an animal at large is subject to the law enforcement officers’ discretion.

3) PENALTIES. If the owner of an animal negligently or otherwise permits the animal to run at large or be untagged, the owner shall forfeit not less than $25 nor more than $100 for the first offense and not less than $50 nor more than $200 for subsequent offenses.

BE IT STILL FURTHER ORDAINED, that the Outagamie County Board of Supervisors does amend Section 34-13 of the Outagamie County Code of Ordinances to read as follows (additions are in bold, italics and underlined; deletions are struck through):

Sec. 34-13. – Unlawful use of telephone or electronic communication devices.

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

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

(2) With intent to frighten, intimidate, threaten, abuse, harass or offend, telephone another and use any obscene, lewd or profane language or suggest any lewd or lascivious act.

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

(1) **Electronic communication device** is any electronic device from which an individual can send any type of communication to another including but not limited to telephone, text message, email, image and/or any type of social media message.

(2) **Electronic communication** is defined as the relaying of information to another individual by means of telephone call, text message, email, social media post or message, video, picture, or other similar medium.

(3) **To contact** is to intentionally cause any telephone call or electronic communication, to be transmitted to another individual.

(4) **Nudity** is defined as the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state, or any showing of anything defined as an intimate part pursuant to Wis. Stat. Sec. 939.22(19).

(5) **Consent** is provided by an individual who is over the age of 18 and who knowingly and intentionally agrees to and/or requests receipt of information from a 3rd party in an electronic format or via telephone.

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

(1) With intent to harass or offend, telephones **contacts** another and uses any obscene, lewd or profane language or suggests any lewd or lascivious act, **without the consent of the recipient**.

(2) Makes repeated telephone calls, **Repeatedly contacts**, whether or not conversation or responsive communication ensues, with intent solely to harass any person at the called number.

(3) Makes a telephone call, **or sends an electronic communication**, whether or not conversation or responsive communication ensues, without disclosing his or her identity and with intent to harass any person at the called number.

(4) **Sends an electronic communication to another which depicts nudity, without the recipient’s consent.**

(5) Knowingly permits any telephone or **electronic communication device** under his or her control to be used for any purpose prohibited by this section.

BE IT STILL FURTHER ORDAINED, that the Outagamie County Board of Supervisors does create Section 34-28 of the Outagamie County Code of Ordinances to read as follows:

**Section 34-28. – Regulation of noise.**

**(1) DEFINITIONS.**

(a) **Daytime Hours.** The hours between 5:00 A.M. and 11:00 P.M.

(b) **Nighttime Hours.** The hours between 11:00 P.M. and 5:00 A.M.

(c) **Person.** Any person, person's firm, association, co-partnership, joint venture, corporation, or any entity public or private in nature.

(d) **Noise Disturbance:** Any noise which tends to annoy or disturb a reasonable person.

(e) **Municipality:** Any town, village, or city within Outagamie County.
(2) PROHIBITED CONDUCT.

(a) No person shall intentionally operate or cause to be operated on private or public property any source of sound in such a manner as to create a noise disturbance.

(b) No person shall own, possess or harbor any animal or bird which frequently or for continued duration makes sound which creates an unreasonable noise disturbance.

(c) No person shall intentionally sound or permit the outdoor sounding of any fire alarm, burglar alarm, civil defense alarm, siren, horn, whistle or similar emergency signaling device, except for emergency purposes or for testing. Any testing of such alarms shall be performed during daytime hours.

(d) No person shall operate any motor vehicle unless such motor vehicle is equipped with an adequate muffler in constant operation and properly maintained to prevent excessive or unusual noise. The provisions of Wisc. Statute § 347.39 are hereby adopted by reference and made a part of this section.

(e) No operator shall intentionally accelerate a motor vehicle so as to emit an unnecessary noise as a result of the friction caused between the tire and the surface on which the vehicle travels, or to cause the tires to throw stones or gravel when in the process of accelerating.

(3) EXCEPTIONS. The following enumerated activities shall be exempt from the regulations of this section, provided reasonable steps are taken to minimize the noise emitted:

(a) Government Operations. Section 2 does not apply to activities by any Local, County, State or Federal Government entity acting in the normal or ordinary course of exercising their duties.

(b) Emergency Operations. Emergency operations necessary to protect the health and welfare of the citizens.

(c) Noises Required By Law. Any noise required specifically by law for the protection, health, welfare, or safety of people or property.

(d) Snow Removal Equipment. The use of snow removal equipment to remove snow from a path of travel.

(e) Airplanes and Railroad Operations. Aircraft and railroad operations which are controlled specifically by federal law.

(f) Bells, Chimes. Bells, chimes, and similar devices which signal the time of day and operate during the daytime hours for a duration of no longer than 15 minutes in any given hour during daytime hours.

(g) Warning Devices. Any device being used to request assistance or warn against an unsafe condition.

(h) Farming or Agricultural Activities. Use of Non-stationary farming equipment and stationary farming equipment used for agricultural purposes in an area zoned for agricultural use.

(i) Sports events conducted at reasonable times.

(j) Any noise type and volume level as allowed by Outagamie County Ordinance Section 54, Division 5.

(4) VARIANCES.

(a) Special Variance Permits.
1. General. A special variance permit may be issued for an event or circumstance of limited duration, including, but not limited to, special community events.

2. Application. Any person seeking a special variance permit pursuant to this section shall file an application with the local governing municipality or his or her designee. The application for a special variance permit, permit fees, scope, and the grounds for obtaining such a permit are left to the discretion of the local municipality as to issuance, scope and duration.

5 PENALTIES. Any person who shall violate any provisions of this section shall be subject to a forfeiture of not less than $100 nor more than $500 for the first offense and not less than $200 nor more than $1,000 for subsequent offenses.

BE IT FINALLY ORDAINED, that the Outagamie County Clerk be directed to forward a certified copy of this ordinance to the Outagamie County Sheriff and Municipal Code Corporation for inclusion in the Outagamie County Code of Ordinances.

Dated this ___ day of May 2020

Duly and officially adopted by the County Board on: _______________________

Signed: ___________________________  ___________________________
Board Chairperson  County Clerk

Approved: ____________________  Vetoed: ________________

Signed: __________________________
County Executive