

## Chapter 22

### Sex Offender Residency Restrictions

- 22.1 Purpose and Intent**
- 22.2 Definitions**
- 22.3 Residency Restrictions**
- 22.4 Safety Zone Exceptions**
- 22.5 Distribution**
- 22.6 Penalties and Remedies**
- 22.7 Severability**
- 22.8 Effective Date**

#### **22.1 Purpose and Intent**

- A. The Wisconsin legislature has provided for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community. Chapter 980 of the Wisconsin Statutes provides for the civil commitment of sexually violent persons.

The United States Supreme Court has recognized that the risk of recidivism posed by sex offenders is high, and when convicted sex offenders re-enter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. See *Smith v. Doe*, 538 US 84, 123 S.Ct. 1140, 155 L.Ed. 2d 164 (2003) and *McKune v. Lile*, 536 US 24, 34, 122 S.Ct. 2017, 153 L.Ed.2d 47 (2002), citing United States Department of Justice Bureau of Justice Statistics, *Sex Offenses and Offenders*, 27 (1997) U.S. Department of Justice Bureau of Justice Statistics *Recidivism of Prisoners Released in 1983* (1997).

The United States Court of Appeals for the 8th Circuit Decision on *Doe v. Miller*, 405 F.3d 700, 716 (8th Cir. 2005) provides, in part, that 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 reoffend, 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.

- B. The Village finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders re-enter society, they are much more likely than any other type of offender to be rearrested for a new sexually based crime. 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. The Village finds and declares that, in addition to schools and daycare centers; children congregate or play in a number of public places, including parks and other facilities for children. It is the intent of this ordinance to serve the Village's compelling interest to promote, protect and improve the health, safety, and welfare of Village citizens by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders are prohibited from entering or establishing residency.

The Village notes that Wisconsin Statute Section 61.34 authorizes the Village to enact legislation for the health, safety and welfare of the public. In addition, Wisconsin Statute Section 61.34(5) notes that the powers, rights and privileges accorded villages under said Chapter are to be liberally construed in order to promote the general welfare, peace, good order and prosperity of the City.

- C. This Ordinance will not apply to sexually violent persons , as defined in Wisconsin Statute §980.01 (7), because these persons are controlled under the regulations of Wisconsin Statute §980.

## **22.2 Definition**

- A. A "Child" is any person under the age of 18.
- B. A "Sex Offender" is a person who has been convicted of, or has been found delinquent of, or has been found not guilty by reason of disease or mental defect of a "sexually violent offense" and/or a "crime against children".
- C. A "Sexually Violent Offense" shall have a meaning as set forth in Wisconsin Statute Sec. 980.01(6), as amended from time to time.
- D. A "Crime Against Children" shall mean any of the following offenses set forth within the Wisconsin Statutes, as amended, or the laws of this or any other state or federal government, having like elements necessary for conviction, respectively:

- Sec. 940.225(1) First Degree Sexual Assault
- Sec. 940.225(2) Second Degree Sexual Assault
- Sec. 940.225(3) Third Degree Sexual Assault
- Sec. 940.22(2) Sexual Exploitation by Therapist
- Sec. 940.30 False Imprisonment – Victim was Minor and Not the Offender’s Child
- Sec. 940.31 Kidnapping – Victim was Minor and Not the Offender’s Child
- Sec. 944.02 Rape (prior statute, see now 940.225)
- Sec. 944.06 Incest
- Sec. 944.10 Sexual Intercourse with a Child (prior statute, see now 948.02)
- Sec. 944.11 Indecent Behavior with a Child (prior statute, see now 948.02)
- Sec. 944.12 Enticing Child for Immoral Purposes (prior statute, see now 948.07)
- Sec. 948.02(1) First Degree Sexual Assault of a Child
- Sec. 948.02(2) Second Degree Sexual Assault of a Child
- Sec. 948.025 Engaging in Repeated Acts of Sexual Assault of the Same Child
- Sec. 948.05 Sexual Exploitation of a Child
- Sec. 948.055 Causing a Child to View or Listen to Sexual Activity
- Sec. 948.06 Incest with a Child
- Sec. 948.07 Child Enticement
- Sec. 948.075 Use of a Computer to Facilitate a Child Sex Crime
- Sec. 948.08 Soliciting a Child for Prostitution
- Sec. 948.09 Sex with a Child Age 16 or Older
- Sec. 948.095 Sexual Assault of a Student by School Instructional Staff
- Sec. 948.11(2)(a) or (am) Exposing a Child to Harmful Material felon sections
- Sec. 948.12 Possession of Child Pornography
- Sec. 948.13 Convicted Child Sex Offender Working with Children
- Sec. 948.30 Abduction of Another’s Child

Sec. 97.17 Not Guilty by Reason of Mental Disease or an Included Offense

Sec. 975.06 Sex Crime Law Commitment

- E. A "Residence" is a place where a person sleeps, which may include more than one location and may be mobile or transitory.
- F. A "Domicile" shall mean an individual's fixed and permanent home, where the individual intends to remain permanently and indefinitely and to which, whenever absent, the individual intends to return, except that no individual may have more than one domicile any time. A domicile is not a residence for any special or temporary purpose.
- G. A "Child Safety Location" is any real property other than a private residence that supports or upon which there exists any facility used for or that supports instruction, recreation, or entertainment for children, including, but not limited to a school, public park, park facility, library, playground, pathway, recreational trail or a daycare center.
- H. A "Child Safety Zone" is any place within the Village that is physically located within 2,000 feet of any Child Safety Location

**22.3 Residency Restrictions**

- A. **Child Safety Zone Restriction.** Subject to the definitions in Section 22.2 above, no sex offender shall establish a residence within the Village that is within a Child Safety Zone
- B. The distance shall be measured from the closest boundary line of the real property supporting the residence of a Sex Offender to the closest boundary line of the real property that supports or upon which there exists any of the uses enumerated in Section 22.2G above.
- C. It is unlawful to let or rent any place, structure, or part thereof with the knowledge that it will be used as a residence by a Sex Offender if such place, structure, or part thereof is located within a Child Safety Zone. A person letting or renting a place or structure shall be deemed to have such knowledge if, at least ten (10) days prior to letting or renting the place, the Sex Offender's name appears on the Wisconsin Department of Correction sex offender registry.
- D. No person and no individual who has been convicted of a crime against children shall be permitted to reside in the Village of Eagle, unless such person was domiciled in the Village of Eagle at the time of the offense, which resulted in the person's most recent conviction for committing a crime against children.
- E. Residency Restriction Exceptions
  - (1) A Sex Offender residing within 2,000 feet of any real property that supports or upon which there exists any of the uses enumerated in Section 22.2G above, does not commit a violation of this ordinance if any of the following apply:

- a. The person has established a residence prior to the effective date of this section, which is within 2,000 feet of a Child Safety location for such use as a Child Safety location or such use is newly established after such effective date and is located within such 2,000 feet of a residence of a person which was established as provided herein.
- b. The Convicted Sex Offender is a minor or ward under guardianship.
- c. A Resident who returns to continually rented (or owned) real estate after conviction and serving sentence.
- d. The Convicted Sex Offender was under 20 years of age at the time of the offense, has petitioned the Village Board of Trustees for an exemption and has received a waiver.

F. Holiday Events and Public Gatherings

- (1) It is unlawful for a sex offender to actively take part in any public holiday event involving children under 18 years of age where the distributing of candy or other items to children takes place, including but not limited to holiday parades or similar gatherings, Halloween trick or treating, wearing a Santa Claus costume in a public place in relationship to Christmas, wearing an Easter Bunny costume in a public place in relationship to Easter, or wearing any other costume reasonably expected to attract children in a public place, or other similar activities that may, under the circumstances then present, tend to entice a child to have contact with a sex offender.
- (2) Exception. This section does not apply to any event in which the sex offender is the parent or guardian of the child(ren) involved, and the sex offender's child(ren) are the only child(ren) present.
- (3) Loitering.
  - (1) It shall be unlawful for any sex offender as defined in section 22.2B above, to loiter or prowl within 2,000 feet of any Child Safety Location as defined in Section 22.2G above, in a place, at a time or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of children in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself or manifestly endeavors to conceal himself or herself or any object.
  - (2) A sex offender does not commit a violation of loitering in a Child Safety Zone if any of the exceptions in section 22.4 apply.

**22.4 Child Safety Zone Exceptions**

Sex Offender who enters upon or who is present upon or within a Child Safety Zone does not commit a violation of this ordinance if any of the following apply:

- A. The property also supports a church, synagogue, mosque, temple, or other house of

religious worship, subject to all of the following conditions:

- (1) The Sex Offender's entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
  - (2) The Sex Offender shall not participate in any religious education programs that include individuals under the age of 18.
- B. The property also supports a use lawfully attended by a Sex Offender's natural or adopted child(ren), which child's use reasonably requires the attendance of the Sex Offender as the child's parent upon the property, subject to the following condition:
- (1) The Sex Offender's entrance and presences upon the property occurs only during hours of activity related to the use as posted to the public.
- C. The property also supports a polling location in a local, state, or federal elections, subject to all of the following conditions:
- (1) The Sex Offender is eligible to vote.
  - (2) The property is the designated polling place for the Sex Offender; and
  - (3) The Sex Offender enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is to any member of the electorate, and vacates the property immediately after voting.
- D. The property also supports a school lawfully attended by a Sex Offender as a student under which circumstances the Sex Offender may enter upon the property supporting the school at which the Sex Offender is enrolled, for such purposes and at such times as are reasonable required for the educational purposes of the school.
- E. The property also supports a Police station or Village Hall.
- (1) The Sex Offender has business at such place and vacates the property immediately after.

## **22.5 Distribution**

On a yearly basis, a notification to the public as to how to access the sex offender ordinance must be published. The Notification will be in the village newsletter, must indicate that the ordinance is on the Village web-site under Municipal Codes, Chapter 22, and a hard copy can be accessed in the Village Office.

## **22.6 Penalties and Remedies**

- A. Forfeitures. Any person who shall violate any provision of this Chapter or any regulation, rule or order made herein shall be subject to a forfeiture of not less than \$50 nor more than \$500 for each offense. Each day a violation continues shall constitute a separate offense. Neither the issuance of a citation nor the imposition of forfeiture hereunder shall preclude the Village from seeking or obtaining any or all other legal equitable remedies to prevent or remove a violation of this Chapter.
- B. Injunction. If an offender establishes a residence in violation of Chapter 22, or enters

or is present upon or within a Child Safety Zone in violation of Chapter 22, the Village Attorney may bring an action in the name of the Village in Circuit Court to permanently enjoin any such violation as a public nuisance.

**22.7 Severability**

If any section, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of such ordinance.

**22.8 Effective Date**

This ordinance shall take effect and be in full force from and after passage and publication.