

ORDINANCE No. 2016-07

**AN ORDINANCE REGARDING
RESIDENCY OF SEXUAL OFFENDERS**

The Village Board of the Village of Wausaukee, Marinette County, Wisconsin, do ordain as follows:

SECTION I. AMENDMENT OF PROVISIONS.

WHEREAS, 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; and

WHEREAS, Chapter 980, Wis. Stats., provides for the civil commitment of sexually violent persons, a more dangerous type of sex offender, and specifically Section 980.08, Wis. Stats., following such commitment, under certain conditions, provides for the supervised release of such persons into the community; and

WHEREAS, the Village of Wausaukee 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, and

WHEREAS, the Village of Wausaukee recognizes that 24-hour law enforcement coverage is not present in the community due to budgetary restraints; and

WHEREAS, 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 and vulnerable members of our society, and more than two-thirds of victims of rape and sexual assault are under the age of eighteen (18) and sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon.

NOW, THEREFORE, the Village Board of the Village of Wausaukee do ordain that Section 11-2-19 of the Village of Wausaukee Code of Ordinances is amended and recreated to read as follows:

Sec. 11-2-19 Sexual Offender Residency Restrictions.

(a) **Findings and Intent.**

(1) **Findings.**

- a. Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual

predators who present an extreme threat to the public health, welfare and safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses; and most sexual offenders commit many offenses, have many more victims that are never reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

- b. According to a 1997 report by the United States Department of Justice, sex offenders have high rates of recidivism which are much higher than recidivism rates for other types of violent crimes. Sex offenders are the least likely to be cured and the most likely to re-offend and prey on the most vulnerable members of the community.
- c. While Federal and State Fair Housing Statutes prohibit unlawful discrimination, they do not extend the same protections to a sex offender (as herein defined) with respect to a place of residency (as herein defined) where a Safety Zone (as herein defined) has been established.
- d. This Section is a regulatory measure aimed at protecting the health and safety of children in the Village of Wausaukee from risk that convicted sex offenders may reoffend. Given the high rate of recidivism for sex offenders and that reducing opportunity and temptation is important to minimizing the risk of reoffense, 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, day care facilities and other places children frequent. The Village of Wausaukee finds and declares that in addition to schools and day care facilities, children congregate or play at public parks and other locations.
- e. The Village Board of the Village of Wausaukee has been advised of the decision of the United States Court of Appeals for the 8th Circuit, in *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005), which provides in part at page 716 of that decision the following:

"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. [Citations 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 reoffense. 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 reoffense against children. One

expert in the district court opined that it 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 policy makers of Iowa are entitled to employ such "common sense", and we are not persuaded that the means selected to pursue the State's legitimate interest are without a rational basis . . ."

- (2) **Intent.** It is the intent of this Section not to impose a criminal penalty but rather to serve the Village of Wausaukee's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the Village of Wausaukee by creating areas around locations (safety zones) where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence.
- (b) **Definitions.** The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them as follows, except where the context clearly indicates a different meaning:
 - (1) **Child.** A person under the age of sixteen (16) for purposes of this Section.
 - (2) **Designated Offender (Sex Offender).** Any person who is required to register under Section 301.45, Wis. Stats., for any sexual offense against a child or any person who is required to register under Section 301.45, Wis. Stats., and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to Section 301.46(2) and (2m), Wis. Stats. Included in this definition 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".
 - (3) **Minor.** A person under the age of seventeen (17).
 - (4) **Permanent Residence.** A place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.
 - (5) **Temporary Residence.** A place where the person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or non-consecutive days in any month and which is not the person's permanent address. A residence may be mobile or transitory.
 - (6) **Loitering.** Whether in a group, crowd or as an individual, to stand idly about, loaf, prowl, congregate, wander, stand, linger aimlessly, proceed slowly with many stops, delay or dawdle.
 - (7) **Sexually Violent Offense.** Shall have the meaning as forth in Section 980.01(6), as amended from time to time.
 - (8) **Safety Zones.** Any real property that supports or upon which there exists any facility used for children, including, but not limited to:
 - a. A public park, parkway, park facility, conservancy area or similar area or facility.
 - b. A public swimming pool.
 - c. A public library.
 - d. A public recreational trail or path.
 - e. A public playground.

- f. A school for children.
 - g. Athletic fields and facilities used by children.
 - h. A movie theater.
 - i. A licensed day care center.
 - j. A ski hill or sledding hill open to the public.
 - k. Any specialized school or place of instruction for children, including, but not limited to a gymnastics academy, dance academy or music school.
 - l. A public or private golf course or range.
 - m. Aquatic facilities open to the public.
 - n. A place of worship, church, synagogue, mosque, temple or other house of religious worship ("church").
 - o. Any facility for children (which means a public or private school, a group home, as defined in Section 48.02(7), Wis. Stats.; a residential care center for children and youth, as defined in Section 48.02(15d), Wis. Stats.; a shelter care facility, as defined in Section 48.02(17), Wis. Stats.; a foster home, as defined in Section 48.02(6), Wis. Stats.; a treatment foster home, as defined in Section 48.02(17q), Wis. Stats.; a day care center licensed under Section 48.65, Wis. Stats.; a day care program established under Section 120.13(14), Wis. Stats.; a day care provider certified under Section 48.651, Wis. Stats.; or a youth center, as defined in Section 961.01(22), Wis. Stats.
- (9) **Crimes 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:

- 940.225(1) First Degree Sexual Assault
- 940.225(2) Second Degree Sexual Assault
- 940.225(3) Third Degree Sexual Assault
- 940.22(2) Sexual Exploitation by Therapist
- 940.30 False Imprisonment - Victim Was Minor & Not The Offender's Child
- 940.31 Kidnapping – Victim Was Minor & Not the Offender's Child
- 944.02 Rape (prior statute, see now 940.225)
- 944.06 Incest
- 944.10 Sexual Intercourse With a Child (prior statute, see now 948.02)
- 944.11 Indecent Behavior With a Child (prior statute, see now 948.02)
- 944.12 Enticing Child for Immoral Purposes (prior statute, see now 948.07)
- 948.02(1) First Degree Sexual Assault of a Child
- 948.02(2) Second Degree Sexual Assault of a Child
- 948.025 Engaging in Repeated Acts of Sexual Assault of the Same Child
- 948.05 Sexual Exploitation of a Child
- 948.055 Causing a Child to View or Listen to Sexual Activity
- 948.06 Incest With A Child
- 948.07 Child Enticement
- 948.075 Use of a Computer to Facilitate a Child Sex Crime
- 948.08 Soliciting a Child For Prostitution
- 948.095 Sexual Assault of a Student by School Instructional Staff
- 948.11(2)(a) or (am) Exposing a Child to Harmful Material (felony sections)

948.12	Possession of Child Pornography
948.13	Convicted Child Sex Offender Working With Children
948.30	Abduction of Another's Child
971.17	Not Guilty By Reason of Mental Disease or An Included Offense
975.06	Sex Crime Law Commitment

(c) **Sexual Offender and Sexual Predator Residency; Prohibitions; Penalties; Exceptions.**

- (1) **Prohibited Location of Residence.** It is unlawful for any designated offender to establish a permanent residence or temporary residence within One Thousand Five Hundred (1,500) feet of any Safety Zone property/use enumerated in Subsection (b)(8), or any other place designated by the Village of Wausaukee as a place where children are known to congregate.
- (2) **Prohibited Activity.**
 - a. **Loitering.** It is unlawful for any designated offender to loiter within One Thousand Five Hundred (1,500) feet of any Safety Zone property/use enumerated in Subsection (b)(8) or any other place designated by the Village of Wausaukee as a place where children are known to congregate.
 - b. **Holiday Events/Parties.** It is unlawful for any designated offender to participate in a holiday event involving children under eighteen (18) years of age, such as distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas, or wearing an Easter Bunny costume on or preceding Easter, or other similar activities. Holiday events in which the offender is the parent or guardian of the children involved, and no non-familial children are present, are exempt from this Subsection. "Participation" is to be defined as actively taking part in the event.
- (3) **Measurement of Distance.**
 - a. For purposes of determining the minimum distance separation, the requirement shall be measured by following the straight line from the outer property line of the permanent residence or temporary residence to the nearest outside property line of a school, licensed day care center, park, trail, playground, place of worship, or any other place designated by the Village of Wausaukee as a Safety Zone property/use where children are known to congregate.
 - b. The Village Clerk-Treasurer shall maintain an official map showing prohibited locations as defined by this Section. The Village Clerk-Treasurer, upon the recommendation of the law enforcement or planning authorities, shall update the map at least annually to reflect any changes in the location of prohibited zones. These shall be designated on the map as child safety zones. The map is to be displayed or available in the Office of the Village Clerk-Treasurer.
- (4) **Violations; Penalties.** A person who violates this Subsection shall be punished by forfeiture per Section 1-1-6. Each day a person maintains a residence in violation of this Section constitutes a separate violation. The Village of Wausaukee may also seek equitable relief.
- (5) **Exceptions.** A designated offender residing within a prohibited area as described in Subsection (c)(1) does not commit a violation of this Section if any of the following apply:

- a. The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Section 340.45, Wis. Stats., before the original effective date of this Section.
 - b. The person is a minor or ward under guardianship and is not required to register under Sections 301.45 or 301.46, Wis. Stats.
 - c. The school, licensed day care center, park, trail, playground, place of worship, or any other place designated by the Village as a place where children are known to congregate within One Thousand Five Hundred (1,500) feet of the person's permanent residence was opened after the person established the permanent residence or temporary residence and reported and registered pursuant to Section 301.45, Wis. Stats.
- (d) **Property Owners Prohibited From Renting Real Property To Certain Sexual Predators and Sexual Offenders; Penalties.**
- (1) **Prohibition.** It is unlawful to let or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to this Section, if such place, structure, or part thereof, trailer, or other conveyance is located within a prohibited location zone described in Subsection (c)(1). 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 or structure, the sex offender's name appears on the Wisconsin Department of Correction's sex offender registry and the person letting or renting the place knew the sex offender would be residing at the subject place or structure.
 - (2) **Violations; Penalties.** A property owner's failure to comply with the provisions of this Subsection shall constitute a violation of this Section, and shall subject the property owner to the Code enforcement provisions in Subsection (c)(4) as provided in this Section. Each day a violation continues shall constitute a separate offense.
- (e) **Safety Zones.**
- (1) **Presence Regulated.** A sex offender shall not enter upon or be present upon or within a Safety Zone.
 - (2) **Safety Zone Exceptions.** A sex offender who enters upon or who is present upon or within a safety zone does not commit a violation of this Subsection 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 eighteen (18).
 - b. The property also supports a use lawfully attended by a sex offender's natural or adopted children, which a 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 presence upon the property occurs only during hours of activity related to the use as posted to the public.

2. Written advance notice is made from the person to an individual in charge of the use upon the property and approval from an individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return, of the attendance by the sex offender.
 - c. The property also supports a polling location in a local, state or federal election, 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 reasonably required for the educational purposes of the school.
 - e. The property also supports a court, government office or room for public governmental meetings, subject to all of the following conditions:
 1. The sex offender is on the property only to transact business at the government office or place of business, other than a public library, or attend an official meeting of a governmental body; and
 2. The sex offender leaves the property immediately upon completion of the business or meeting.
- (3) **Violations; Penalties.** A person who violates this Subsection shall be punished by a forfeiture per Section 1-1-6. Each day a violation continues shall constitute a separate offense.
- (f) **Injunctions and Other Penalties for Violations.** Neither the issuance of a citation nor the imposition of forfeiture hereunder shall preclude the Village of Wausaukee from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this Chapter. If an offender establishes a residence in violation of Subsections (c) or (d) above, or enters or is present upon or within a Safety Zone in violation of Subsection (e) above, the Village Attorney may bring an action in the name of the Village of Wausaukee in circuit court to permanently enjoin any such violation as a public nuisance.
- (g) **Appeals.** The above requirements may be waived or modified upon approval of the Village Board of the Village of Wausaukee through appeal by the affected party. Such appeal shall be made to the Village Clerk-Treasurer, who shall forward the request to the Village President and Village Board, which shall request and receive reports from law enforcement authorities serving the Village on such appeal. The Village President and Village Board shall convene and consider the public interest as well as the affected party's presentation and concerns. After deliberation and determination, the Village President and Village Board shall forward its decision to the law enforcement authorities serving the Village of Wausaukee for their information and action. A written copy of the decision shall be provided to the affected party.

SECTION II. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION III. EFFECTIVE DATE.

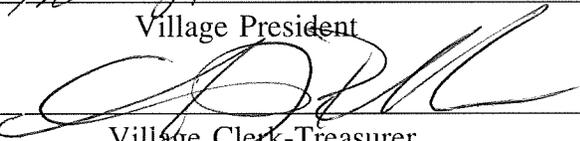
This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 19th day of September, 2016.

VILLAGE OF WAUSAUKEE, WISCONSIN



Village President



Village Clerk-Treasurer

INTRODUCED: 9/19/16

ADOPTED: 9/19/16

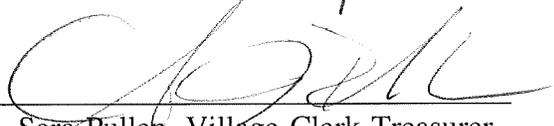
PUBLISHED: _____

State of Wisconsin:

County of Marinette:

I hereby certify that the foregoing Ordinance is a true, correct, and complete copy of an Ordinance duly and regularly enacted by the Village of Wausaukee Village Board on the 19th day of September, 2016 and that said Ordinance has not been repealed or amended and is now in full force and effect.

Dated this 19th day of September, 2016



Sara Pullen, Village Clerk-Treasurer