

STATE OF WISCONSIN VILLAGE OF OCONOMOWOC LAKE WAUKESHA COUNTY

ORDINANCE NO. 256

AN ORDINANCE ESTABLISHING SEX OFFENDER RESIDENCY
AND LOITERING RESTRICTIONS
WITHIN THE VILLAGE OF OCONOMOWOC LAKE.

WHEREAS, the Wisconsin State legislature has provided for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release in the community, and

WHEREAS Ch. 980 of the Wis. Stats provides for the civil commitment of sexually violent persons. The purpose of the statute is to protect the public, to treat convicted sex offenders who are at a high risk to reoffend, to reduce the likelihood that they will engage in such conduct in the future, and following such commitment sec. 980.08 Wis. Stats. provides, under certain conditions, for the supervised release of such persons into the community; and

WHEREAS, according to the US Department of Justice, Bureau of Justice Statistics, in 2001 there were approximately three hundred eighty-six thousand (386,000) convicted sex offenders registered in forty-nine (49) states and the District of Columbia, and

WHEREAS, according to a 1997 report prepared by the US Department of Justice titled "Sex Offenses and Offenders", nearly two-thirds of victims of convicted rape and sexual assault offenders serving time in state prison were under the age of eighteen (18); the median age of victims of imprisoned sexual assault offenders was less than thirteen (13) years; the median age for rape victims was about twenty-two (22) years; an estimated twenty-four percent (24%) of those serving time for rape and nineteen percent (19%) of those serving time for sexual assault had been on probation or parole at the time of the offense, and

WHEREAS, the United States Supreme Court has recognized that the risk of recidivism posed by sex offenders is "frightening and high" and "when convicted sex offenders re-enter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault". *Smith v. Doe*, 538 U.S. 84 (2003) and *McKune v. Lile*, 536 U.S. 24, 34 (2002) citing *U.S. 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*, page 6 (1997); and

WHEREAS, the Village Board is aware that a number of states across the United States, including but not limited to Florida, Georgia, Alabama, Iowa and California,

impose restrictions on sex offenders with respect to residency; and

WHEREAS, 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), provides, 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 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. [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 State's legitimate interest are without rational basis"; and

WHEREAS, sec. 61.34(1), Wis. Stats. grants the Village Board "power to act for the government and good ... and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, fine, imprisonment, and other necessary or convenient means";

Now, Therefore, the Village Board of the Village of Oconomowoc Lake, Waukesha County, Wisconsin DOES ORDAIN AS FOLLOWS:

SECTION 1. An ordinance for the Village of Oconomowoc Lake Municipal Code, entitled "Sex Offenders Residency and Loitering Restrictions," is hereby created to read as follows:

SEX OFFENDERS RESIDENCY AND LOITERING RESTRICTIONS.

Findings and Intent.

- (a) The Village Board finds that repeat sex offenders, sex offenders who use physical violence, and sex offenders who prey on children are sex predators who present an extreme threat to the public safety. Sex offenders are extremely likely to use physical violence and to repeat their offenses; and most sex 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 sex offenders' victimization to society at large, while incalculable, clearly exorbitant.
- (b) It is the intent of this ordinance not to impose a criminal penalty, but rather to serve

the Village's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the Village by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sex offenders and sex predators are prohibited from establishing temporary or permanent residence or loitering.

Definitions.

- (a) Child, unless otherwise indicated, means a person under the age of 18.
- (b) Children, unless otherwise indicated, means two or more persons under the age of 18.
- (c) Club means a building or grounds used for regular or periodic meetings or gatherings of a group of persons organized for business or nonprofit purposes. Club also means the Oconomowoc Lake Club.
- (d) Contiguous means parcels of property that are in direct physical contact along a boundary or a point. A parcel of property is also contiguous to another for purposes of this ordinance when such parcels are separated from direct physical contact along a boundary or a point only by a stream, tributary, river, public or private road, street, or highway.
- (e) Designated Sex Offender means any person who is required to register under Wis. Stats. Sec. 301.45 for any sexual offense against a child or any person who is required to register under Wis. Stats. Sec. 301.45 and who has been designated a Special Bulletin Notification (SBN) sex offender pursuant to Wis. Stat. Sec. 301.46(2) and (2M).
- (f) Lake means Oconomowoc Lake and its tributaries.
- (g) Minor means a person under the age of 17.
- (h) Parcel of Property means all real property, whether platted or unplatted, having the same tax key number irrespective of whether such real property is divided into two or more parts by reason of any public right-of-way, mil tax road, stream, or other body of water.
- (i) Permanent Residence means a place where the person abides, lodges, or resides for 14 or more consecutive days.
- (j) River means the Oconomowoc River.
- (k) Temporary Residence means a place where the person abides, lodges, or resides for a period of 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 or more consecutive or non-consecutive days in any month and which is not the person's permanent

address.

Sex Offender and Sex Predator Residence, Prohibition, Penalties, Exceptions.

- (a) Prohibited Location of Residence. It is unlawful for any designated sex offender to establish a permanent residence or temporary residence on any parcel of property within the Village of Oconomowoc Lake that is contiguous to any lake, river or club.
- (b) Prohibited Activity. It is unlawful for any designated sex offender to participate in a holiday event in the Village of Oconomowoc Lake involving one or more children by means of distributing candy or other items to such child or children on Halloween, wearing a Santa Claus costume on or during any of the thirty days preceding Christmas, or wearing an Easter Bunny costume on or during any of the thirty days preceding Easter, or by engaging in any other similar types of activities that may, under the circumstances then present, tend to entice a child to have contact with a designated sex offender. Holiday events in which the designated sex offender is the parent or legal guardian of the child or children involved, and no non-familial child or children are present, are exempt from this paragraph.
- (c) Loitering by Designated Sex Offender Prohibited. It shall be unlawful for any designated sex offender to loiter or prowl on any lakes and rivers or on or within 200 feet of a lake, river or club in a place, at a time, or a manner not usual for law abiding individuals, under circumstances that warrant alarm for the safety of the persons or property 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. Unless flight by the actor or other circumstances makes it impractical, a law enforcement officer shall prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him or her to identify himself or herself or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true, and, if believed by the law enforcement officer at the time, would have dispelled the alarm.

The prohibitions set forth in this sub. (c) shall not apply where the designated sex offender is a minor and was with one or both of his or her parents, guardians or other adult person having his or her care.

- (d) Child Safety Zones. The Village Police Department shall maintain an official map showing locations identified in sub. (a) and sub. (c) of this section. The Police Department shall update the map at least annually to reflect any changes in the location of prohibited zones. These locations shall be designated on the map as

"child safety zones". The map is to be displayed in the office of the Oconomowoc Lake Village Clerk. In the event of a conflict, the written terms of this Ordinance shall control.

(e) Penalties. Subject to the Exception provisions in (f), the following penalties shall apply to any violation of this Section:

1. A person who violates provisions of Sub. (a) of this section shall be subject to a forfeiture of not less than \$500.00 and no more than \$1,000.00 plus the costs of prosecution for each violation. Each day a person maintains a residence in violation of this ordinance constitutes a separate violation. The Village may also seek equitable relief to gain compliance.
2. Any person violating Sub. (b) or Sub. (c) of this section shall forfeit not less than \$1,000.00 and no more than \$2,000.00 plus the costs of prosecution for each violation .
3. Violation of this ordinance shall constitute a public nuisance, which, in addition to monetary forfeitures shall be subject to action by the Village to abate and enjoin such nuisance.

(f) Exception. A designated sex offender does not commit a violation of this section if any of the following apply:

1. The person established the permanent residence prior to the date of the violation that resulted in a conviction as a designated sex offender.
2. The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stat. Sec. 301.45 before the effective date of this Ordinance.
3. The person is a minor and is not required to register under Wis. Stat. Sec. 301.45 or Sec. 301.46.
4. The club was opened after the person: (a) established the permanent residence or temporary residence and, (b) the person reported and registered the residence pursuant to Wis. Stats. Sec. 301.45.
5. The residence is also the primary residence of the person's parents, grandparents, siblings, spouse, or the person's child or children provided that such parent, grandparent, sibling, spouse or child established the residence at least two years before the designated offender established the residence at the location. For purposes of this sub. (f)(5), the person's "child" and/or "children" refers to the biological or adopted relationship with the person without regard to the age of the child or children provided that such relationship existed prior to the date of the violation which resulted in a

conviction as a designated sex offender.

Property Owners Prohibited From Renting Real Property to Certain Sex Offenders and Sex Predators.

(a) It is unlawful for any person 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 ordinance, if such place, structure, or part thereof, trailer or other conveyance is located within a prohibited location zone described in Section (a) under the "Sex Offender and Sex Predator Residency, Prohibitions, Penalties, and Exceptions" provisions of this Ordinance.

(b) Penalties.

1. A person who violates provisions of Sub. (a) of this section shall be subject to a forfeiture of not less than \$500.00 and no more than \$1,000.00 plus the costs of prosecution for each violation. Each day a person lets or rents a place, structure, or part thereof, trailers or other conveyance maintains a residence in violation of this ordinance constitutes a separate violation. The Village may also seek equitable relief to gain compliance.
2. Violation of this section shall constitute a public nuisance, which, in addition to monetary forfeitures shall be subject to action by the Village to abate and enjoin such nuisance.

SECTION 2. SEVERABILITY. The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 3. EFFECTIVE DATE.

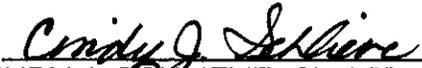
This ordinance shall take effect upon passage and publication or posting as provided by law.

Dated this 20th day of December, 2010.

Date of Adoption: 12/20/10

VILLAGE OF OCONOMOWOC LAKE:

By: 
RICHARD J. KNEISER, Village President

Attest: 
CINDY J. SCILIEVE, Clerk/Treasurer

Published and/or posted this 6TH day of JAN. 2011

Macintosh HD:Users:PaulAlexy:Documents:Users:Paul:Documents:My Documents:MyFiles:Oconomowoc Lake Ordinances:Sex Offender Ord:sex offender.VOL.12-28-10.docx

